

**STATE OF HAWAII**  
**DEPARTMENT OF LAND AND NATURAL RESOURCES**  
**Office of Conservation and Coastal Lands**  
**Honolulu, Hawaii**

June 9, 2006

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

**REGARDING:** Resolution of an Enforcement Action Involving the Unauthorized Construction of an Access Road on State Land at Waioli Valley, Island of Kauai

**APPLICANT:** Walton D.Y. Hong  
3135A Akahi Street  
Lihue, Kauai, Hawaii 96766

Laurel Bennett  
5780A Huaki Road  
Kapaa, Kauai, Hawaii 96746

**LANDOWNER:** State of Hawaii

**LOCATION:** Waioli, Kauai

**TMK:** (4) 5-5-08:02

**AREA OF PARCEL/** 20 acres

**SUBZONE:** Resource Subzone

**BACKGROUND:**

This matter is being brought before the Board of Land and Natural Resources (BLNR) at the request of Mr. Walton D.Y Hong (Mr. Hong), who is acting on behalf of Ms. Ursula Lamberson (**Exhibit 1**). This matter is also being brought before the BLNR at the request of Laurel Bennett (**Exhibit 2**). The issue involves a violation proceeding that originally came before the BLNR in 1993 (**Exhibit 3**). The violations involved two parties: Mr. Douglass Bonar, and the Boyce Brown Trust (**see July 23,**

**1993 staff report, Exhibit 4).** The old staff report indicates that in 1989 Mr. Bonar conducted extensive illegal work within the Conservation District, on private and public lands<sup>1</sup>.

The work involved grubbing and grading, road construction, and placement of culverts in streams. The action involved the following parcels and parties (**See Map of Waioli, Exhibit 5**):

1. 5-5-8:1 (Douglas Bonar)<sup>2</sup>
2. 5-5-8:2 (State of Hawaii)
3. 5-5-8:3 (Douglas Bonar)
4. 5-5-8:4 (Douglas Bonar)
5. 5-5-8:5 (Boyce Brown Trust)
6. 5-5-8:54 (Douglas Bonar)

The BLNR took action on this matter on July 23, 1993 and found the parties<sup>3</sup> in violation of conservation rules and regulations (**see Exhibit 3**). Fines were assessed to the various parties and remedial actions were imposed. Some fines were paid. For instance, a payment of \$6,100 was received from the United States Department of the Interior (USDI) sometime in 1996 to resolve monetary fines associated with the following parcels:

1. 5-5-8:3
2. 5-5-8:4
3. 5-5-8:5

These parcels had been confiscated by USDI from Michael Kuntz who had acquired the property from Mr. Bonar and the Estate of Boyce Brown subsequent to the BLNR's violation action. These funds were provided to the DLNR by the USDI, to clear title and permit the resale of the parcels (**Exhibit 6**).

The DLNR did acknowledge USDI's payment in November 1996 but stipulated that payment of the fine did resolve the illegal roadway and culverts (**Exhibit 7**). In addition, a letter dated April 24, 1996 to Mr. Tom Leuteneker from the DLNR indicates that Mr. Thompson paid the required fine attributable to parcel 5-5-8:1.

The only outstanding fines are related to violations committed by Mr. Bonar on Parcels 5-5-8:54 and 5-5-8:2 (state). These fines total \$10,167 (\$8,134.20 for the State parcel, see Exhibit 10 for explanation) and have never been collected.

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1 The record indicates that in 1990 Mr. Brown designated Mr. Bonar as his agent, so it appears that Mr. Bonar was the sole entity that actually did the work.

2 This parcel was conveyed to Joe Thompson shortly after the unauthorized work had occurred.

3 The parties included Bonar, Brown, and Thompson.

In summary, it appears that the only unresolved matters related to this case involve non-payment of a fine by Mr. Bonar, and failure to remediate the illegal roadway on State land. All of the private parcels involved except parcel 5-5-8:1, owned by Mr. Thompson, are currently owned by entities that were not parties to the original violation action:

1. 5-5-8:1 (Joe Thompson)<sup>4</sup>
2. 5-5-8:2 (State of Hawaii)
3. 5-5-8:3 (Laurel Bennett) *new*
4. 5-5-8:4 (Uluwehi, Inc.) *new*
5. 5-5-8:5 (Ursula Lamberson) *new*
6. 5-5-8:54 (Cook Island, Co.) *new*

#### DISCUSSION:

Ms. Lamberson (5-5-8:5) and Ms. Bennett (5-5-8:3) are currently seeking easements from the Kauai District Land Office (KDLO) over State land (5-5-8:2) to access their private land in Waioli Valley. OCCL Staff has told KDLO that any easement requests should be stayed until the prior Conservation District Violations are sufficiently resolved. Since these violations are directly related to the State parcel, it would be unwise to process an easement request without first re-visiting and resolving long outstanding BLNR requirements.

**Fines:** At this point, the only unpaid fine is \$10,167 (\$8,134.20 for the State parcel). This fine was to be paid by Mr. Bonar. Fines imposed on other individuals have been largely resolved. [Note: Although the 1993 staff report indicated that there were fines as much as \$150,000 for damage to historic sites, condition nineteen (19) of the 1993 BLNR action indicated that the BLNR action was not intended to address historic preservation and water related matters. Staff presumes that this meant that these Divisions were to prosecute these matters independent of the former OCEA. However, based on discussions with both divisions, it does not appear that any further action was taken by them to actually resolve the matters.]

**Remediation of the road:** The BLNR imposed a number of conditions in their July 23, 1993 action. Many of these conditions remain unresolved. The relevant conditions have been listed below:

**Condition 9:** That the subject landowners be instructed that the illegal roadway and all drainage culverts and other improvements on State land parcel TMK: 5-5-8:2 be removed and/or restored within one hundred and eighty (180) days to the satisfaction of the department. If the violations are not resolved within one hundred eighty (180) days from this Board action, then each day thereafter that the situation is not corrected shall be deemed a daily violation under Section 183-41(e) and Chapter 171, HRS, subject to the following: with good cause, as determined by the Department, the Board authorized the Chairman to extend the one

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<sup>4</sup> Paid fine attributed to work done by Bonar on the property.

**hundred and eighty (180) days period provided that the landowners cooperate with the State to resolve the roadway alignment matter.**

Staff notes that this condition has never been completely satisfied since the unauthorized roadway has never been removed or restored. [Note: Staff visited Waioli Valley on April 27, 2006. With the exception of a small slab on concrete, there was no evidence of a culvert or other stream crossing improvement at location A. (see Map of Waioli, Exhibit 5, and Photograph 1 of 12, Exhibit 8). A major culvert remains in place on state land above Ms. Bennett's and Lamberson's properties (see Map, location C, and Photograph 7 of 12). This culvert provides access to parcels 5-5-8:54 (Cook Island, Co.), and 5-5-8:1 (Joe Thompson). A small culvert exists near the south portion of parcel 5-5-8:3 (Bennett) (see Map, location B, Photograph 11 of 12).

Failure to abide by this condition should have resulted in the DLNR pursuing additional fines. However, these matters were never pursued, likely due to the illness and death of the case planner in the late 1990s. The file contains no correspondence after 1997, which roughly corresponds to the passing of the case planner.

**Condition 10: That the private landowners shall accurately survey, stake, and flag their respective lots by a registered land surveyor within sixty (60) days and obtain the review and approval of the State land surveyor.**

Staff discovered a map in the file prepared by the former State Land Surveyor that identified the boundaries of the private parcels and the dirt road (Same Map Used as Exhibit 5).

**Condition 11: That the private landowners be instructed to submit within sixty (60) days, all necessary information, as required, to the commission on Water Resources Management related to stream alteration activity.**

It does not appear that any information was provided to the Commission of Water Resources Management (CWRM) related to stream work, or if anything was submitted, CWRM has no record of it. OCCL contacted CWRM staff to discuss the matter. CWRM staff had no file or recollection of the matter. It appears that stream alterations occurred in three locations as indicated on Exhibit 5, locations A, B, and C. Culverts were removed from one of the three locations (location A) as already noted in this report.

**Condition 12: That the private owners be instructed to submit within sixty (60) days all necessary information as required by the Historic Preservation Division to resolve outstanding issues related to destruction of historic sites.**

Staff contacted the Historic Preservation Division who indicated that these issues remain outstanding.



**Condition 14: That the landowners submit to the Department within sixty (60) days, a seeding and reforestation plan for the affected properties, including State land. The subject plan will include a weed control element and appropriate actions shall be immediately implemented by landowners upon departmental approval.**

There is no evidence that this ever occurred. The area has been maintained in good condition over the years as evidenced by the attached photographs (Exhibit 8).

**Condition 15: That the landowners submit a debris disposal plan to the Department (Division of Forestry and Wildlife) within thirty (30) days for all remaining debris on the property. All remaining debris shall be appropriately disposed of, as ordered by the Department.**

There is no evidence that this ever occurred. The subject lands are not under the jurisdiction of DOFAW.

**Condition 16: That the landowners submit a performance security bond of \$20,000 to the Department within sixty (60) days, in order to ensure that the land is restored to as a natural condition as possible.**

Staff finds no record of a performance security bond ever being provided to the Department.

**Condition 17: That the landowners shall remove all materials, tools, etc. from the properties within thirty (30) days. Should the landowner desire to develop or improve their properties, appropriate permits (i.e. TV's/CDUA's) must be obtained from the Board and/or Department prior to implementation. In this regard, a comprehensive master plan, which includes a roadway access element for all private properties, and excludes use of State land, should be developed.**

As already noted, the area has been maintained and staff found no evidence of materials or tools on the premises. There is no evidence that a Master Plan was submitted. Exclusion of state land for roadway access would conflict with a prior circuit court action<sup>5</sup>.

**Condition 18: If any of the private parties fail to carry out this remedial activity required by this action, then the State upon 60 days advance written notice to the party in question, may carry out the remedy at the State's discretion. The State may then assess the private party for the cost of correcting the violation and place a lien against the private party for that amount.**

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<sup>5</sup> One of the problems with the 1993 Board action is that it does not appear to take into consideration a 1988 court order granting access to over state land (parcel 2) to two of the parcels in Waioli Valley Parcels 4 & 5. This action was the result of civil suit between the former landowner, Brown and Bonar and Kobayashi (Exhibit 9).

There is not evidence in the record that the State provided any written notice to any of the parties for their failure to conduct remedial work, nor that the State corrected the work itself.

**Condition 19: That the landowners are informed that this action does not address outstanding potential violations related to historic preservation or water related matters.**

No action was ever taken with respect to damaged caused to historic sites or streams.

#### **DISCUSSION:**

The record clearly shows that Mr. Bonar (and Mr. Brown having authorized him to do so) were responsible for the re-alignment of a road onto State land and the construction of culverts for stream crossings indicated on **Exhibit 5**. Although one could argue that the current owners are also responsible because they stand to benefit from the former parties' illegal actions, this would be a difficult hill to climb legally speaking. It has been over 15 years since Waioli Valley was desecrated. Time and nature have healed many of the scars inflicted by the former landowners.

On April 24, 1996, the former Chairman of the Department of Land and Natural Resources sent a letter to Mr. Tom Leuteneker (representing Doug Bonar). That letter attached as **Exhibit 10**, explains that *"The Board imposed fines regarding violations on TMKs: 5-5-8:54 and 02[State] are the responsibility of Mr. Bonar."* Mr. Bonar has never addressed any of the requirements of the BLNR. He apparently resides on the island of Kauai but staff is unsure of his exact location. Second, it appeared that there may have been some interest and willingness by the State to entertain an after-the-fact permit for the road and culverts, *provided that Bonar had agreed to pay the required fines*. The same letter states, *"Once the fines have been paid, the department will consider the roadway easement issue... the department will consider use of the existing illegal roadway, including allowing the culverts to remain, as an interim access until a more permanent roadway alignment to service all of the Kuleana parcels can be formulated..."*

There has been no activity or letters generated on this case for almost 10 years. All of the parcels have changed hands, except for the Thompson parcel (5-5-8:1), and three of the parcels were sold to parties (having no relationship with Mr. Bonar) by the Federal government who had confiscated the lands from an intervening purchaser, Mr. Kuntz, for a drug related conviction. Parcels auctioned by the Federal government include parcels 5-5-8:3 (Bennett), parcel 5-5-8:4 (Uluwehi, Inc.), and parcel 5-5-8:5 (Lamberson). Based on the loose facts that staff has been able to compile on this odd case, as well as on site visit, staff does not believe that Lamberson, Bennett, or the state should remediate the road. The recommendation of the 1993 staff report to remediate the road appear to be punitive in nature on Bonar/Brown, and to impose this on others would not appear to make any sense.

Staff believes that the most reasonable way to resolve this matter would be to allow the processing of an after-the-fact Conservation District Use Application for the parts of the road that are

Board of Land and  
Natural Resources

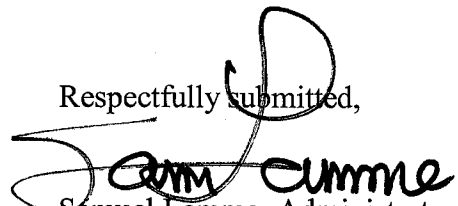
unauthorized. If this were approved, parties could then apply for easements from the Kauai District Land Office to gain legal access to their land. As far as fines, staff believes that the present owners have benefited from the illegal actions of Bonar, *relative to the State parcel*, and that the balance of \$8,134.20 *relative to the State parcel*, should be paid to the State.

Staff notes that there remain unresolved issues with respect to the destruction of historic sites and one major culvert. Staff recommends that the individual landowners through the CDUA process address these issues, should they propose to use their private parcels for some purpose in the future.

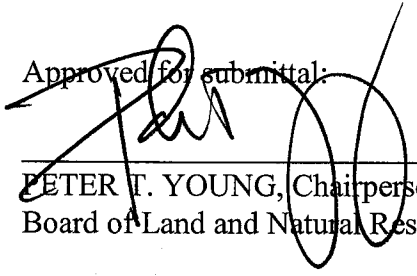
**RECOMMENDATION:**

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources (Board) allow Ms. Lamberson and Ms. Bennett to apply for easements for roadway access to their respective parcels, provided that an after-the-fact CDUP is executed for the unauthorized portions of the road, and provided that the balance of Mr. Bonar's fine of \$8,134.20 *relative to the State parcel*, is paid as a condition of the granting of a CDUP.

Respectfully submitted,

  
Samuel Lemmo, Administrator

Approved for submittal:

  
PETER T. YOUNG, Chairperson  
Board of Land and Natural Resources

Attachments

LAW OFFICES OF

WALTON D.Y. HONG

WALTON D.Y. HONG

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LIHUE, KAUAI, HAWAII 96766-1106

July 11, 2005

Department of Land and Natural Resources  
Office of Conservation and Coastal Lands  
Attn: Mr. Sam Lemmo  
P. O. Box 621  
Honolulu, HI 96809

Re: Ursula Lamberson, Waioli Valley

Dear Mr. Lemmo:

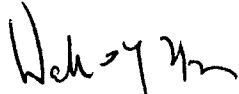
As we discussed, enclosed herewith please find a draft of a proposed letter to the Board of Land and Natural Resources, to acquire an easement over state property at Waioli Valley, in favor of parcel identified as Kauai Tax Map Key: 5-5-08-05.

We would appreciate your reviewing the proposed letter and advising us whether you are in agreement with the proposed procedure to cure the past violation and obtain the easement.

We understand that any of your comments are not binding on the Board of Land and Natural Resources, but appreciate your input to resolve the matter in an efficient and expeditious manner as possible.

Thank you for your consideration to this matter. I will be out of my office until the ending of July, and will call you upon my return to discuss the same.

Yours very truly,



Walton D. Y. Hong

WDYH:ckf

cc: Ms. Ursula Lamberson

EXHIBIT 1

1 of 5

**DRAFT**

[DATE]

Board of Land and  
Natural Resources  
State of Hawaii  
Attention: Mr. Sam Lemmo  
P. O. Box 621  
Honolulu, HI 96809

Re: Easement over State property at Waioli Valley,  
Hanalei, Kauai, Hawaii  
TMK: (4<sup>th</sup>) 5-5-08: 05  
Ref. No. :PSF:05kd-045

Gentlemen:

We represent Ursula Lamberson, Trustee, who is the owner of that certain parcel of real property situated at Waioli Valley, Hanalei, Kauai, Hawaii, more particularly identified as Kauai Tax Map Key: 5-5-08: 05. The parcel was acquired by Ms. Lamberson in April, 2003.

An action was brought in Fifth Circuit Civil No. 3226, "Steven Thomas Brown and Douglass Bonar v. Harold Y. Kobayashi, et al.", for acquiring access over State and private property to parcels in Waioli Valley. By an Order Granting in part and Denying IN Part Plaintiffs' Motion for Summary Judgment in the case, Judge Gerald Matsunaga ruled that Parcel 5, *inter alia*, were entitled to an easement for ingress and egress from Kuhio Highway.

For your reference, we are enclosing a copy of the aid Order, as well as a copy of the tax map for the area. The easement was also surveyed, and we also enclose a metes and bounds description, as well as a map, of the easement area.

Ms. Lamberson subsequently discovered that Parcel 5 lacks a recorded easement, notwithstanding the Court's decision in the said Civil No. 3226. It appears that this was due to a failure to follow up with recording an easement by the parties.

Ms. Lamberson inquired by our letter of December 9, 2004, as to the steps necessary to confirm and record an easement in favor of Parcel 5 (as well as Parcel 4, which was also owned by Ms. Lamberson at the time).

We subsequently learned that there are conditions that remain outstanding, resulting from improper actions taken by Mr. Bonar more than 15 years ago without the required Conservation District Use Permits. These conditions include a fine, plus restoration of the involved properties.

As best as we can determine, after the fine and conditions were imposed upon Mr. Bonar, Parcel 5 and other properties were subsequently conveyed to a Mike Kuntz and a Mr. Thompson (as to TMK: 5-5-08: 01) without payment of the fines or resolving the conditions. The properties were then confiscated by the federal government for illegal acts of Mr. Kuntz, and subsequently auctioned. Island Land Co. was the successful bidder. Parcel 5 was then ultimately acquired by Ms. Lamberson.

By letter of April 24, 1996, a copy of which is enclosed herewith, the Department of Land and Natural Resources acknowledged the payment of the fine attributable to TMK: 5-5-08: 01 by Mr. Thompson, and noted that the outstanding fine of \$2,033.55 remained as to TMK: 5-5-08: 54 and attributable to Mr. Bonar.

We also learned that a check in the amount of \$6,100.25 was received I 1996 by the Department of Land and Natural Resources from the U.S. Department of Justice, as was stated in your Department's letter of November 29, 1996, "in satisfaction of penalties imposed by the Hawaii Board of Land and Natural Resources (Board) for illegal land use on the subject parcels" and "[a]cceptance of the check will satisfy the land use monetary fine". The letter referred to TMK: 5-5-08: 03, 04 and 05. The letter further notes that "[i]t will not resolve the illegal roadway-culverts matter." A copy of that letter is also enclosed.

While Ms. Lamberson is an innocent purchaser, having acquired the property after it had changed hands a number of times since Mr. Bonar. As Mr. Bonar cannot be located to be held accountable for resolving the violations, Ms. Lamberson is attempting to reach a reasonable and equitable solution to the matter.

Accordingly, Ms. Lamberson proposes the following to the Board of Land and Natural Resources to reach a final resolution of this matter:

(a) The Board of Land and Natural Resources will grant an easement for access and utility purposes over the proposed easement area described in the attachments hereto;

(b) Ms. Lamberson will pay the outstanding balance, if any, of the original fine imposed for the violations by Mr. Bonar, with credit being given for

payments made by Mr. Thompson and the U. S. Department of Justice. Although Ms. Lamberson is an innocent third party, she is willing to offer this as a show of good faith of her willingness to conclude the matter and acquire the easement, even though the easement was ordered by the Court in Civil No. 3226;

(c) The roadway, including the ford across the stream just before reaching Parcel 5, will be permitted to remain in its present location and present state. We are enclosing photographs of the length of the roadway, and as can be seen from the photographs, the roadway is serviceable and provides safe access to the lots in the valley. We do not believe that it would be reasonable nor prudent to have the roadway removed after all these years, only to have to request a Conservation District Use Permit to rebuild the roadway in the same location.

Please note that the request of Ms. Lamberson does not extend the easement to Parcel 54, and the issue of the culverts crossing the ditch/stream just before Parcel 54 is not included in Ms. Lamberson's request.

On behalf of Ms. Lamberson, we note the following in support of her request:

(1) She is an innocent party, and should not be held responsible for actions occurring years before she acquired the parcel;

(2) As shown from the enclosed photographs, the present roadway provides safe and reasonable access to the lots in Waioli Valley. There is no justification to require the removal of the roadway and restoration of the land after all these years. Further, if the roadway is removed, a new request will be necessary to construct a roadway to provide access to the landlocked parcels in the valley;

(3) Removal of the current road, and construction of a replacement road in the same area will result in greater adverse environmental effects than permitting the present road to remain;

(4) The Fifth Circuit Court has recognized the necessity and appropriateness of the easement, and only through the apparent lack of follow up was the easement not granted;

(5) The proposal of Ms. Lamberson will bring closure to the matter.

On the foregoing basis, we respectfully request your favorable consideration to the request. If there any questions regarding the above, please feel free to have your staff contact me.

Thank you for your attention and consideration to this matter. Your prompt attention will be appreciated.

Yours very truly,

Walton D. Y. Hong

**EXHIBIT 1 545**



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**A. LAUREL BENNETT**

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April 18, 2006

RECEIVED  
OFFICE OF CONSERVATION  
AND COASTAL LANDS  
2006 APR 19 P 12:21  
DEPT. OF LAND &  
NATURAL RESOURCES  
STATE OF HAWAII

SENT BY FACSIMILE TRANSMISSION (WITHOUT EXHIBITS) AND BY  
CERTIFIED MAIL (WITH EXHIBITS), RETURN RECEIPT REQUESTED

Sam Lemmo  
Department of Land & Natural Resources  
Office of Conservation & Coastal Lands  
P.O. Box 621  
Honolulu, HI 96809

Re: Waioli Valley, Hanalei  
Payment of Fines and  
Easement benefitting  
TMK (4) 5-5-8-3 (Bennett)

Neighboring Lots:  
TMK (4) 5-5-8-4 (Lamberson)  
TMK (4) 5-5-8-5 (Uluwehi, Inc.)  
TMK (4) 5-5-8-1 (Thompson)  
TMK (4) 5-5-8-54 (Cook Is. company)

Dear Mr. Lemmo:

As you are aware, I am the owner of a kuleana located in the Waioli Valley, Hanalei, on the island of Kauai (TMK (4) 5-5-8-3) that is within the State Conservation District, Resource Subzone. I acquired this lot (Lot 3) in 2002. I can provide you a copy of the Royal Patent verifying the kuleana status of Lot 3.

I would like to obtain a recorded access and utility easement over state property in favor of my kuleana. I would also like to receive confirmation that there are no outstanding state fines relating to my lot.

I ask that the following issues and enclosed exhibits be considered by you in making recommendations and taking action on this matter. I apologize in advance for the length

**EXHIBIT 2 1 of 8**

of this letter mandated by the tortured history and many complications involved. In an effort to provide a simplified approach, I have organized it under subheadings.

**1. FINES.** The fines relating to Lots 1, 3, 4 and 5 have been paid; Lot 54 fines are unpaid.

Many years ago, prior owners of Lots 1, 3, 4, 5 and 54 were fined by the state for unpermitted grading of the above properties (the "Waioli Valley" properties"), among other things.

According to the enclosed letter dated April 24, 1996, Michael D. Wilson of the DLNR acknowledged that (a) Thompson paid the fine attributable to TMK 5-5-8:01 (Lot 1); and (b) Mr. and Mrs. Kuntz, in association with the U.S. Justice Department, sent a check to resolve the fines attributed to TMK 5-5-8, parcels 3, 4 and 5 (Lots 3, 4, and 5). However, the fines relating to TMK 5-5-8-54 were not paid.

A \$6,100.25 check was issued by the U.S. Justice Department for the fines relating to parcels 3, 4 and 5. This check was "released" by the DLNR in 1996. This is confirmed by the enclosed letter dated November 29, 1996 from Michael D. Wilson to Anthony G. Hall, U.S. Attorney for the District of Idaho.

Thus, the enclosed letters signed by Michael D. Wilson provide proof that all fines relating to Lots 3, 4 and 5 have been satisfied.

It is necessary that the DLNR clearly acknowledge this fact in writing because certain state employees are continuing to tell people that the fines are outstanding and hundreds of thousands of dollars are owed to the state. This has caused at least one pending sale to fall out of escrow and, obviously, has a substantial chilling effect on the properties (i.e., "slander of title").

**2. EASEMENT.** Access easements to Kuhio Hwy over state land and the Kobayashi parcel have been granted by Court order dated October 24, 1988 in Civil No. 3226.

An action was brought in Fifth Circuit Court (Civil No. 3226) entitled "Steven Thomas Brown and Douglass Bonar v. Harold Y. Kobayashi, et al.", for acquiring access over state and private property to the Waioli Valley lots. Bill

Tam, Deputy Attorney General, represented the state in this proceeding. In addition, Norma and Chi Chasin and J. William Sanborn), who were owners of other lots in the Waioli Valley, intervened in this action and sought separate relief.

During the course of the litigation, a motion for summary judgment was filed by the owners of Lots 3 and 4 (Bonar) and 5 (Brown). On October 24, 1988, the court issued its Order Granting in Part and Denying in Part Plaintiffs' Motion for Summary Judgment. In his order, Judge Gerald Matsunaga ruled that Lots 4 and 5 were entitled to an easement for ingress and egress over state land from Kuhio Highway. Due to a typographical error or mistake, Lot 3 was not specifically mentioned in the order even though it was also part of the motion. If necessary, an amended order should be obtainable from the court to correct this error. In any case, Lot 3 is a kuleana and under Hawaii law, it cannot be landlocked by the state. A copy of the October 24, 1988 order is enclosed.

**3. THE STATE OF HAWAII'S POSITION IN CIVIL ACTION NO. 3226.** The State supported the Waioli property owners right to easements over state land and over the Kobayashi parcel.

The State of Hawaii was named as a defendant in Civil Action No. 3226. The state aligned itself with the plaintiff Waioli lot owners and against defendant Kobayashi. The state supported a finding that the plaintiffs and the state had rights of access to their lots over the Kobayashi parcel and also argued that such access should be by way the dirt road running over the Kobayashi parcel through state land and to the Waioli lot owners property and then on up the valley to state forest land (the "dirt road").

The state's position is evidenced by the enclosed copy of the state's Proposed Findings of Fact and Conclusions of Law filed with the court on September 4, 1992, where the following is stated:

"Defendant State of Hawaii has acknowledged to this court in motions and in the previous settlement agreement (now set aside) that kuleanas and parcels landlocked within State land have a right of access to their parcels across State land and will be able to obtain easements for such access upon application to the Department of Land and Natural Resources subject to terms and conditions, including

location, as the Board of Land and Natural Resources may determine." See pages 6-7, paragraph 8).

The state's position was that access should be provided to the Waioli lot owners and the state over the existing dirt road running across the Kobayashi parcel and state land because these lot owners have historical "rights of tenants", the kuleanas have easements by necessity, and the existing dirt road provided the most practicable and fair access as required by law. See pp. 5-9, paragraphs 4-16.

The state goes on to request that proposed findings be adopted by the court that hold in favor of the plaintiffs (i.e. the Waioli lot owners) and the State of Hawaii and against Kobayashi, and that relief be granted by the court in the form of an easement over and across Kobayashi's parcel in the location of the present dirt road as requested. See page 9, last paragraph.

#### **4. SETTLEMENT/STIPULATIONS FOR GRANTS OF EASEMENTS.**

The Waioli lot owners and the State have recorded easements over the Kobayashi parcel

The litigation between the Waioli Valley lot owners, the Kobayashi family and the state was settled by the parties twice: once in 1989 and again in 1992.

After settlement, grants of easement were recorded that gave easements over the Kobayashi land to the Waioli Valley lot owners and also to the state. These easements connect to the dirt road running across state land. I can provide you with copies of the recorded easements and/or copies of title reports that show the easements were recorded.

In connection with the first settlement, the State of Hawaii agreed that "the owners of lots within the State parcel have a right of access over and across the state parcel to reach their respective lots." Please see the enclosed letter from Wm. Tam, Deputy Attorney General to Mary Blaine Johnson, Esq. dated March 14, 1989.

Enclosed is a copy of the Fifth Circuit, Civil Trial Calendar for Judge Wendell K. Huddy, dated September 8, 1992 which sets forth the terms of the second settlement. You will note that the settlement provides that upon satisfaction of certain terms, easements will be given by the Kobayashi family to the State of Hawaii, the owners of

Lots 3, 4 and 5 and 1 (Thompson) and also J. Wm. Sanborn (with respect to other property owned by Sanborn).

You will note that the State of Hawaii was to receive an easement over the Kobayashi property but was to "include in its budget \$10,000 or an amount equivalent in kind for the improvement of the easement parcel." I don't know if the state complied with this term.

**5. EXISTING DIRT ROAD.** An old dirt road provides access to the state and the Waioli property owners; an access easement over this road has been granted by the state to a Waioli property owner.

For more than 50 years, the Waioli Valley property owners and the state have been using a dirt road cut by Joesph Kobayashi, Sr. (now deceased) from Kuhio Hwy. through his property to and through the state parcel (TMK 5-5-08:2). This dirt road currently runs from a locked gate at the end of Kumu Road, over the Kobayashi property, then over state land, then over a portion of Lot 5. The dirt road continues on past Lot 5 to and through state forest land located mauka of the lots. Kumu Road is a county road and it connects to Kuhio Highway.

The dirt road is used by the state and its agents to provide access to the state forest land mauka of the Waioli Valley lots. For example, there has been a longstanding contract between the state and the Kobayashi family to maintain a ditch located on state land mauka of the subject lots and the dirt road is used for access for this purpose.

On September 29, 1997, the DLNR issued a Conservation District Use Permit (#KA-2870) in favor of Max W.J. Graham, Jr. ("Graham") in connection with TMK No. 4-5-5-8-6. The state subsequently granted an easement to Graham for ingress and egress. Graham subsequently transferred his interest in this property to the Kobayashi family and they built a residence on this lot. This lot is less than 50 yards makai of Lot 5. A copy of the DLNR letter granting the CDUP dated September 29, 1997 is enclosed herewith.

**6. ILLEGAL ALTERATIONS TO DIRT ROAD RESULTING IN BOARD ACTION.** Illegal conduct occurring in the 1980's resulted in Board action; most of the requirements mandated by the Board have been satisfied.

Sometime during the 1980's, the owners of Lots 3, 4, 5 and 54 (Bonar and Brown) and Lot 1 (Thompson) built culverts across the Mamalahoa Stream and altered a portion of the dirt road on the mauka side of the stream without first obtaining permits from the state. They also did unpermitted grading of portions of their properties and buried and/or destroyed archeological sites, primarily located on Lots 1, 4 and 54.

Enclosed is a map showing the location of the original dirt road running through the middle of Lot 5 and the existing dirt road running around and through the edge of Lot 5.

These 1980's violations resulted in the Board action decided on July 23, 1993. Most of the requirements mandated by the Board have been satisfied. The culverts were removed many years ago and the fines for all lots but Lot 54 were paid (see above). There is no longer any evidence of the old dirt road where it bisected Lot 5. The altered dirt road has been used for access by the state and Waioli lot owners for approximately 25 years and has become well established.

#### **7. 1993 BOARD ACTION. Remedies**

On July 23, 1993, the Board of Land and Natural Resources made a ruling that, among other things, issued fines and mandated that the illegal roadway and four illegal culverts be removed and that a new access roadway be designed over private lands. (See letter of Michael D. Wilson dated November 29, 1998).

It appears that the Board took this action without being fully aware of Civil Action No. 3226 and the order entered by the court granting easement rights over state land, or the position taken by the state in that litigation.

Most of the matters referred to in the Board's action have been resolved. The fines imposed by the Board were paid, except for Lot 54 (see above). The culverts were removed many years ago. Surveys and staking have been completed for Lots 3, 4 and 5 (and perhaps other lots). Archeological reports have been prepared for Lots 3, 4 and 5. The lots are all covered with verdant growth and completely restored to their natural condition. There is no debris or materials, tools, etc. located on any of the lots. There is no evidence whatsoever of the old dirt road that used to bisect Lot 5.

The only outstanding matter is the Board decision that the illegal roadway be removed and/or restored (see, Item No. 9; Notice of Board Action).

It would be illogical, impractical and harmful to now require removal of that portion of the old dirt road that was illegally altered approximately 25 years ago, for the following reasons:

a. Although the amount of roadway involved is not significant, removal of the portion of the dirt road that was altered would have a negative impact on the environment and unnecessarily cause damage to the land and vegetation growing there. Cutting a new roadway across Lot 5 in the same location as the old dirt road would also unnecessarily damage the environment.

b. Removal of the altered roadway would mandate that Lots 3 and 4 must be accessed over Lot 5, and this directly contradicts the prior court order that access to Kuhie Hwy be provided to these lots over state land; and

c. Removal of the altered roadway will require that the state obtain an easement over Lot 5 to access its own state forest lands. It is doubtful that the state has any rights of access over Lot 5 when it already has a right of way over its own land on an existing road.

#### **CONCLUSION.**

As a kuleana, my lot (Lot 3) has an easement by necessity over state land to Kuhio Hwy. Additionally, Lot 3 has trail rights and rights arising from historical use and "rights of tenants" over state land that already have been acknowledged by the state (see, State of Hawaii Proposed Findings, above). These rights of access over state land were further found to exist by the Court in Civil Action No. 3226.

The State has no right to deny an access easement over state land in favor of Lot 3. It cannot landlock a kuleana.

The State also cannot require access to my lot be made over privately owned property when access over state land is practical, fair, already in existence and in use by the state and the Waioli lot owners for the past 25 years. Such a requirement essentially would landlock Lot 3, a kuleana.

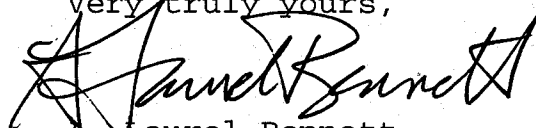
Sam Lemmo  
Re: Waioli Valley properties  
April 18, 2006  
Page 8

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Application is therefore made that the State of Hawaii grant an easement for access and egress and utilities following the existing dirt road running across state land to Lot 3, as shown on the enclosed map and legal description.

Thank you for your attention to this matter. Please let me know if I can provide further information or if you have any questions.

Very truly yours,

  
A. Laurel Bennett

P.S. Other actions were filed in the Fifth Circuit entitled Yates v. Damaso et al. (Civil No. 2070) and Sanborn v. Yates (Civil No. 850049) concerning location of the Waioli properties with respect to the Waioli Stream. These properties were located on the west side of the Waioli Stream by the court and the State of Hawaii has stipulated to be bound by the court determination of their location. I mention this because these additional actions probably further confuse the record.

Enclosed Exhibits:

1. 4/24/96 letter from DLNR to Attorney Luetinager
2. 11/29/96 letter from DLNR to Asst. U.S. Attorney, Idaho
3. 5<sup>th</sup> Cir. Order dated 10/24/88
4. State of HI Proposed Findings of Ft & Conclusions of Law filed with 5<sup>th</sup> Cir Ct on 9/4/92
5. 3/14/89 letter from Wm. Tam to Attorney Johnson
6. 5<sup>th</sup> Cir Ct Minutes for 9/8/92
7. DLNR grant of CDUP dated 9/29/97 (#KA-2870)
8. Map showing original dirt road and road as altered
9. Requested easement: map and legal description

cc: Jim Haynes (w/o exhibits)

848





STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 621  
HONOLULU, HAWAII 96809

REF:OCEA:KCK

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

FILE NO.: KA-90E-31  
DOC. NO.: 3268

SEP 24 1993

CERTIFIED MAIL

Mr. Joe Thomson  
P.O. Box 3236  
Princeville, Kauai 96722

Dear Mr. Thomson:

SUBJECT: Notice of Board Action to Address Identified Conservation  
District Land Use Violations on TMK: 5-5-08: 01 and State  
Parcel TMK: 5-5-08: 02, Waioli Valley, Kauai

This letter serves to inform you that at its meeting of July 23, 1993, the  
Board of Land and Natural Resources made the following decisions relative  
to the subject matter:

That the Board found the property owners responsible for the subject  
violations, to include:

A. Violations

- 1) That Mr. Douglas Bonar be fined for a total of nine (9)  
violations of Chapter 183-41 HRS on Tmks: 5-5-08: 03, 04  
and 54;
- 2) That Mr. Douglas Bonar be fined for a total of eleven (11)  
violations of Chapter 183-41 HRS and one (1) violation of  
Chapter 171(6)-(12) HRS, for a total of twelve (12)  
violations on State land parcel Tmk: 5-5-08: 02;
- 3) That a violation fine of \$500.00 be imposed on Mr. Bonar  
for each of the twenty-one (21) violations, totalling  
\$10,500.00;

DLNR  
OCEA

93 OCT 7 PM 3:41

RECEIVED

EXHIBIT 3 1 of 5

- 4) That the Brown Trust be fined for a total of three (3) violations of Chapter 183-41 HRS on Tmk: 5-5-08: 05;
- 5) That a violation fine of \$500.00 be imposed on the Brown Trust for each of the three (3) violations totalling \$1,500.00;
- 6) That Joe Thomson be fined a total of two (2) violations of Chapter 183-41 HRS on Tmk: 5-5-08: 01;
- 7) That a violation fine of \$500.00 be imposed on Joe Thomson for each of the two (2) violations totalling, \$1,000.00;
- 8) That all fines imposed by the Board be submitted to the Department within sixty (60) days by certified check or cashier's check made payable to the Department;
- 9) That the subject landowners be instructed that the illegal roadway and all drainage culverts and other improvements on State land parcel TMK: 5-5-08: 02 be removed and/or restored within one hundred and eighty (180) days to the satisfaction of the Department. If the violations are not cured within one hundred and eight (180) days from this Board action, then each day thereafter that the situation is not corrected shall be deemed a daily violation under Section 183-41(e) and Chapter 171 HRS, subject to the following: with good cause, as determined by the Department, the Board authorizes the Chairman to extend the one hundred and eighty (180) days period provided that the landowners cooperate with the State effort to resolve the roadway alignment matter;
- 10) That the private landowners shall accurately survey, stake and flag their respective lots by a registered land surveyor within sixty (60) days and obtain the review and approval of the State land surveyor;
- 11) That the private landowners be instructed to submit within sixty (60) days, all necessary information, as required, to the Commission on Water Resource Management related to stream alteration activity;
- 12) That the private owners be instructed to submit within sixty (60) days all necessary information as required by the Historic Preservation Division to resolve outstanding issues related to destruction of historic sites.

- 13) That the landowners submit to the Department within thirty (30) days, a fire contingency plan for departmental approval;
- 14) That the landowners submit to the Department within sixty (60) days, a seeding and reforestation plan for the affected properties, including State land. The subject plan will include a weed control element and appropriate actions shall be immediately implemented by the landowners upon departmental approval;
- 15) That the landowners submit a debris disposal plan to the Department (Division of Forestry and Wildlife) within thirty (30) days for all remaining debris on the property. All remaining debris shall be appropriately disposed of, as ordered by the Department;
- 16) That the landowners submit a performance security bond of \$20,000 to the Department within sixty (60) days, in order to ensure that the land is restored to as natural a condition as possible;
- 17) That the landowners shall remove all materials, tools, etc. from the properties within thirty (30) days. Should the landowner desire to develop or improve their properties, appropriate permits (i.e. TV's/CDUA's) must be obtained from the Board and/or Department prior to implementation. In this regard, a comprehensive master plan, which includes a roadway access element for all private properties, and excludes use of State land, should be developed;
- 18) If any of the private parties fail to carry out this remedial activities required by this action, then the State upon 60 days advance written notice to the party in question, may carry out the remedy at the State's discretion. The State may then assess the private party for the cost of correcting the violation and place a lien against the private property for that amount.
- 19) That the landowners are informed that this action does not address outstanding potential violations related to historic preservation or water related matters.

## B. ADDITIONAL FINES

In the event a landowner fails to pay the Board imposed fine, or comply with Section A, "Violations", or fails to cure or correct any of the above violation(s), the Board authorizes the imposition of a statutory penalty interest rate on any unpaid fine to the extent allowable by law plus a daily fine of \$2,000.00 for each outstanding violation of Chapter 183-41 HRS.

The Board authorizes the Chairman to extend the specified time period by one hundred and eighty (180) days provided the landowner cooperates with the Department to resolve and/or attend to outstanding items.

## C. ADMINISTRATIVE COSTS

That the Board assess each landowner for the Department's administrative costs on this matter, for a total of \$4,624.00 on a pro-rata basis (\$4,624 divided by 26 violations equals \$177.85), such that the following administrative costs are established for each landowner:

Mr. Douglas Bonar	- 21 violations x \$177.85 =	\$3,734.85
Brown Trust	- 3 violations x \$177.85 =	\$ 533.55
Mr. Joe Thomson	- 2 violations x \$177.85 =	\$ 355.70

## D. ATTORNEY GENERAL

- 1) That if the landowners fail to comply with the above requirements after Notice of Board's decision, the matter shall be turned over to the Department of Attorney General for legal action including all administrative costs.
- 2) That Board action in this matter be subject to review by the Attorney General.

Due to the necessity for the Attorney General to review this matter, the timeframe deadlines identified for specific Board actions are established as commencing from the date of receipt of this certified letter.

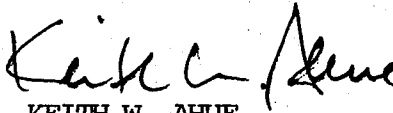
The total fines and administrative costs for your matter is \$1,355.70 (\$1,000.00 fine, plus \$355.70 administrative costs).

Regarding the correct location of the Kuleanas and the road alignment, please be advised that the landowners must resolve the specific location of the Kuleanas with the State Surveyor's Office, and the resolvment of the road alignment with the Division of Land Management and the Division of Forestry and Wildlife.

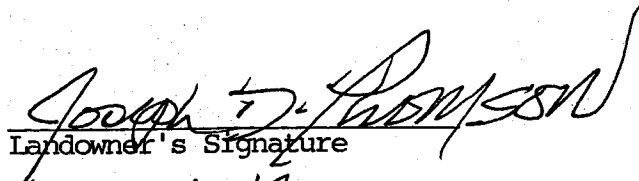
Please acknowledge receipt of this letter, with the above noted conditions, in the space provided below. Please sign two copies. Retain one and return the other to the Department within thirty (30) days.

Should you have any questions on any of these conditions, please feel free to contact our Office of Conservation and Environmental Affairs staff at 587-0377.

Very truly yours,

  
KEITH W. AHUE

Receipt acknowledged

  
Landowner's Signature  
Date 10/7/93

cc: Kauai Board Member  
Kauai Land Agent  
Kauai County Planning Department  
DOH/OSP

STATE OF HAWAII  
Department of Land and Natural Resources  
Office of Conservation and Environmental Affairs  
Honolulu, Hawaii

FILE NO.: KA90E-31  
DOC. ID.: 1295

July 23, 1993

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Land Use Review for  
Identified Property Development on  
Various Parcels, Waioli Valley, Kauai

LANDOWNERS: Douglas Bonar  
Joe Thomson  
Boyce Brown Trust  
State of Hawaii

AGENT/  
REPRESENTATIVE Tom C. Leuteneker (for Mr. Bonar and Brown Trust)  
AND COUNSEL FOR Carlsmith, Ball, Wichman, Murray,  
PRIVATE PROPERTY Case, Mukai and Ichiki, Attorneys at Law  
OWNERS: 2145 Wells Street  
P.O. Box 1086  
Wailuku, Maui, Hawaii 96793

LOCATION/  
TMKS: Waioli Valley, Kauai  
5-5-08: 01, 02, 03, 04, 05 and 54

SUBZONE: Resource

DEFERRAL: This item was deferred from the September 11, 1992  
Board Meeting due to Hurricane Iniki. It was  
rescheduled for Kauai at the first opportunity.

BACKGROUND:

Chronology: Staff has prepared a chronology of significant events for  
Board review. (Exhibit 1)

**Exhibit 4**

The subject parcels are located in Waioli Valley, at the northern area of Kauai (Exhibit 2). The subject properties are identified as TMKs: 5-5-08: 01, 02, 03, 04, 05, and 54 (Exhibit 3). Mr. Douglas Bonar owns parcels 03, 04 and 54. Mr. Bonar previously owned TMK parcel 5-5-08: 01 but has since sold it to Mr. Joe Thomson. The Boyce Brown Trust owns parcel 05. This land use review also involves TMK: 5-5-08: 02, which is State land. All of the subject parcels are located within the Conservation District, Resource Subzone (Exhibit 4).

On November 14, 1988, the Department received three separate CDUA's/EA involving the subject properties. They included:

- KA-2222 - for proposed road and utility improvements  
and easement on TMK: 5-5-08: 02 (State Land)
- KA-2223 - for residential and agricultural uses on  
TMKs: 5-5-08: 1, 3, 4 and 54 (Bonar properties)
- KA-2224 - for residential and agricultural uses on  
TMK: 5-5-08: 05 (Brown Trust property)

Mr. Brown designated Mr. Bonar as his agent (Exhibit 5). After staff review, the CDUA/EA documents were determined to be incomplete, requiring substantial additional information and documentation.

On November 18, 1988, the Board authorized a Temporary Variance (TV KA 89-2) to both private property owners Bonar/Brown Trust to "permit limited work," as represented by the applicants to include "minor clearing and grubbing" of scrub growth (Condition No. 5, Exhibit 6). This limited work on private property parcels TMK: 4-5-5-08: 1, 3, 4, 5 and 54 was to enable the applicants to complete planning and environmental assessments for potential single family residential use. The Board approval was subject to eight (8) conditions, and was acknowledged on December 2, 1988 by Mr. Bonar, as landowner and as designated agent for Brown Trust (Exhibit 7).

On December 23, 1988, Mr. Bonar submitted a letter to the Department withdrawing the subject CDUA's from further processing in order to prepare a more complete application/EA (Exhibit 8). No follow-up improved CDUA/EAs with the appropriate documentation were ever resubmitted to the Department.

On July 10, 1989, the landowners filed a petition with the State Land Use Commission to reclassify the subject properties from the Conservation District to the Agricultural District. The subject petition was subsequently withdrawn on January 24, 1990.

In mid-October 1989, the Department received a complaint indicating that the subject parcels had been extensively grubbed and graded and that substantial work had been done to realign and improve an access roadway, including the placement of culverts and bedding stones. The Department initiated a fact-finding investigation which concluded that extensive work had been done on approximately four to five acres and that the properties were cleared of substantial amounts of ground cover, except for several large mango trees. All the rubbish-grubbing debris were stacked in several large piles. Some were burnt. Several large boulders appeared to have been moved along the roadway. Low areas on the properties were back-filled with dirt. It was noted "Lots of acres, show signs of land contour changes, grading, etc." Further, a earthen "berm/dike was constructed along the side (Waioli) stream."

On October 24, 1989, after reviewing the investigation report, the Department issued two "Notice and Order" letters, one to each then property owner Bonar and Brown Trust, indicating that the subject activities violated Chapter 183-41, HRS and Title 13, Chapter 2 of the Department's Administrative Rules, among other laws (Exhibit 9). The letters further identified violations under Chapter 171-6(12) HRS, (use of State lands), and Chapter 174(c)-71, HRS, (relative to water resources).

The October 24, 1989 Notice and Order letters noted that the "Resource Conservation Subzone does not permit 1) roadway grading, 2) roadway cutting, 3) roadway improvements, 4) major land clearing, 5) major land grubbing, 6) stream alteration, and 7) use of land as a rubbish disposal site without the written permission of the Department of Land and Natural Resources and/or Commission on Water Resource Management". Additionally, the landowners were notified that they were "in violation of Conditions Five (5) and Six (6) of the Board approved Temporary Variance" (TV KA-89-2). The Temporary Variance was subsequently declared "null and void". The landowners were ordered to cease any further activity and restore the premises to its natural state.

Because the Department investigation indicated that State land was involved (TMK: 5-5-08: 02), a request was made to the State Survey Office to prepare an on-site survey. This was done in late October, 1989.

On November 16, 1989, the Department received a letter from Mr. Boyce Brown, who was then residing in France (Exhibit 10). He identified that he was the attorney for the Boyce Brown Trust and that:

- 1) he, or the trustee, did not know what was done;
- 2) he, or the trustee, neither requested nor authorized any work to be done except that which have been authorized in the (temporary variance) permit;
- 3) if he had known any work was being done in violation of the law, regulation or permit condition, it would have been stopped.



Subsequently, on August 22, 1990, the Department received a letter from Mr. Brown indicating that during a recent visit to Hawaii he had gone to Kauai to inspect the subject parcel. He observed, "it is clear that what was done by Mr. Bonar exceeded the scope of the work that had been authorized although not nearly as extensively as the citations issued by your Department would indicate." (Exhibit 11)

AGENCY INPUT AND REVIEW:

PRE-INIKI:

Since October 1989, OCEA staff has consulted with government agencies with responsibility over this area.

Prior to Hurricane Iniki, we asked that they summarize their findings and present recommendations for Board consideration. These include:

Historic Preservation Division:

Our previous memorandums (dated September 24, 1990, February 5, 1990, and November 17, 1989) document our concerns regarding this case.

BACKGROUND INFORMATION

Our office initially reviewed this area under a Land Use Commission District Boundary Petition (A89-644) submitted by Bonar and Brown to use these parcels for agriculture and residences. Three archaeological survey reports submitted in association with the petition were not considered acceptable to our Division and needed to be upgraded because vegetation prevented complete coverage of the parcels and site descriptions were not complete enough. It needed to be clear how many significant historic sites were present and what their nature was, in order to develop an acceptable mitigation plan. This archaeological survey upgrading was never submitted to our office.

The initial archaeological surveys, although far from clear, indicated at least 9 historic sites were present, including agricultural terraces, an irrigation canal (auwai), walls, and a historic house site. These site patterns met expectations, since several of these parcels were Land Commission Awards -- one (LCA 8124) which had included a house lot and taro and kula farm areas. All sites were considered by the consulting archaeologist to be significant at least for their information content, and we agree that this was likely to have been the case, although more sites may have proven to be present and some of the sites might have been significant for other reasons as well. At least 6 of the historic sites appeared to be on State land. All of the sites were within the Conservation District. All sites had been given State Inventory numbers by our office.

### EFFECT OF VIOLATION ON HISTORIC SITES

Extensive grubbing and grading appears to have destroyed the land surface and any historic sites on the 9 acres in Waioli Valley. These sites were no longer present on November 13, 1989. The historic sites were destroyed without ever being adequately recorded or being appropriately mitigated, perhaps even preserved.

It is difficult to determine the number of violations related to these sites, since we are unsure if all sites were found by the archaeological survey. At least 9 sites were present, so one could count 9 violations. Alternatively, one could count violations by parcel, and since some of these sites span parcels, a greater number of violations would result. The Department's deputy attorney general probably should establish a system to count the violations.

The violations also relate to a number of different permits, actions on state land, and the state's historic preservation laws; so several different penalty areas come into effect.

### RECOMMENDATIONS

This action could be taken to court for Chapter 6E violations. The sites on this property have been destroyed and cannot be replaced. Any historic sites found on the property or in nearby parcels should be preserved. The sites that were destroyed cannot be reconstructed. There might be an appropriate settlement. The only plausible restitution would appear to consider having the party deposit funds in our special Historic Preservation Fund to form an endowment to provide for the protection and maintenance of other historic properties on Kauai, such as the hula sites at Ke'e or Kapinao Heiau. An appropriate figure to get the endowment fund established might be \$150,000.

### Commission on Water Resource Management:

On February 5, 1990, the Commission on Water Resource Management sent separate letters to Mr. Boyce Brown and Mr. Douglas Bonar informing them of State Water Code permit requirements, and requiring them to submit an after-the-fact application for a stream channel alteration permit. They were given 20 days to submit their applications.

On February 22, 1990, Mr. Bonar responded indicating that it was not possible to complete the application and submit it within the 20-day period. At that time, Mr. Bonar indicated that he was awaiting completion of working drawings and plans, and that as soon as these were prepared, he would submit his completed application. He indicated that the application would be submitted within two weeks (about mid-March 1990).

On March 21, 1990, Mr. Brown, writing from an address in Sisphony, France, responded to the February 5, 1990 letter, indicating that he neither did the work in Waioli Valley nor authorized the work that was done. He further indicated that he has not seen the work and had not been in the valley for two years. As such, he stated that he had no intention of completing and submitting the after-the-fact application for a stream channel alteration permit.

Later, on August 22, 1990, Mr. Brown wrote to the Department again indicating that he agreed that Mr. Bonar had exceeded the scope of work that had been authorized, although not nearly as extensively as the Department citations indicated. At that time, Mr. Brown requested a meeting to discuss the matter with the Department staff.

No further action was taken, and to date, the Commission on Water Resource Management has not received an application for a stream channel alteration permit from either Mr. Bonar or Mr. Brown. A follow-up letter has been sent to each party, requiring that they submit an application for an after-the-fact stream channel alteration permit within 10 days of the date of the letter.

If an application is received, it will be promptly processed and brought to the Commission for a decision (within 90 days of receipt). If no application is received within 10 days of the letter, the Commission's staff will prepare a staff recommendation on the violation for the next available Commission agenda. The recommendation will address enforcement of the State Water Code permit requirements, appropriate fines for the violations revealed in the investigation, and appropriate restoration of the altered stream channels.

In preparing your recommendation to the Board of Land and Natural Resources, we ask that the issue of the restoration of the stream channels be reserved for the Commission on Water Resource Management, in accordance with the State Water Code.

Division of Forestry and Wildlife:

Our recommendations to the violations in this case is as follows:

- 1) The clearing of hau and other vegetation on the subject property has been documented. It is highly recommended that the slash be either mulched or removed from the premises. A fire contingency plan should also be submitted to our office for approval prior to any mulching or removing of the slash;

- 2) It is difficult to ascertain what the area was like prior to the removal of the vegetation. However, I don't think it is unreasonable for the violator to restore the area in its natural condition. This would probably involve tree planting as well as grass seeding. We would recommend that a planting plan be submitted to this office for approval;
- 3) The removal of the natural vegetation has allowed undesirable weeds to invade the area. It is highly recommended that a weed control program be instituted along with the planting plan;
- 4) All mulching, removal of brush, planting and seeding should be done prior to the rainy season. In its present condition, the area is highly susceptible to erosion during the rainy season. A due date should be set (60 days? 90 days?);
- 5) On record, we also recommend that ALL improvements be removed. This would include the removal of the culverts and roads.
- 6) After all improvements and restorations are made, it is recommended that a Department representative(s) make an on-site inspection and report its finding to the Board of Land and Natural Resources.

Division of Conservation and Resources Enforcement:

On August 12, 1992, a follow-up site inspection was done. While checking the surrounding areas, observed approx. 40 to 75 yds-Mauka-from grubbed areas, within a bamboo patch, trees cut and land cleared-appeared to be done by hand tools. No signs of any type of equipment used. The area is approx. 75 to 100 ft. in diameter. Approx. 8 large guava trees (6 inch diameter plus) were cut down, also lots of bamboo was cut down and burned. Also observed in this area several rock wall terraces, in which trees were cut and burned. There were wooden stakes, in a rectangular shape, approx. 12 ft. x 20 ft., which appear to be a future building site. Within the area, a wood pile-guava cuttings and some hand tools, covered with a blue tarp, also hand tools-shovels, saws etc. and cement footing blocks and galvanize post, covered with a green tarp. Also observed was a garden area, with papaya seedlings.

It is unknown if the above-mentioned items/activities are within property owned by Douglas Bonar or who is responsible for these activities-no identification or immediate residences in the area to observe or hear activities being done.

Checking T.M.K., unable to determine if cutting/clearing/burning/planting, is within Douglas BONAR's property. Request survey to be done to determine land boundaries.

POST INIKI:

Subsequent to Hurricane Iniki, we again asked agencies to submit comments relative to their review of the matter.

Division of Forestry and Wildlife

As a part of the recovery of the unauthorized clearing and damage done in Waioli Valley, we would suggest that the following conditions be considered:

1. They propose a weed control plan, to be reviewed and approved by DOFAW;
2. They propose a vegetation restoration plan, to be reviewed and approved by DOFAW;
3. They propose a fire control plan, to be reviewed and approved by DOFAW;
4. Any planting of vegetation (including species selection) be pre-approved by DOFAW.

Of course, any vegetative work must be coordinated with the restoration of the original waterways and stream courses.

The overall objective of DOFAW for Waioli Valley is public areas and extensive outdoor recreation opportunities. The transfer of management responsibilities from the Division of Land Management to DOFAW was made to expedite this objective.

The development of home sites within mauka Waioli Valley is not consistent with DOFAW's long-term objectives. DOFAW will attempt to design public access and recreational opportunities to limit interaction between these uses.

DOFAW does not believe that the illegal road constructed on State land [between the Boñar and Brown parcels] has public access benefits as it will increase interaction between home sites and outdoor recreation. DOFAW recommends that use of state land for access to any private home sites within Waioli Valley be minimized. It also recommends that any road constructed illegally on state lands not used for access be restored to their natural condition as approved by DOFAW.

1. A master conceptual plan for the valley should be adopted and should govern all proposed uses.

2. The original road through the Brown parcel has been in existence for more than 30 years and should be retained (or relocated within the Brown parcel).
3. Private landowners with lots in the makai State parcel will seek access to their individual parcels. To discourage spot urbanization of this area, DOFAW strongly recommends:
  - a. consolidation of private parcel where possible;
  - b. acquisition where possible;
  - c. access to private parcels coordinated to minimize impacts;
  - d. restriction and conditions on development of private homes and lands.
4. Easements over State lands to:
  - a. private lands;
  - b. mauka state lands;need to be located in a manner consistent with a Master Plan for the Valley.
5. The Board of Land and Natural Resources should adopt a coordinated plan addressing 1) DOFAW plan; 2) Conservation District Use Permit Violations and remedies; 3) Brown vs. Kobayashi litigation settlement; 4) Division of Land Management actions in makai parcels.

#### Historic Preservation Division

No substantial changes have taken place to the historic sites since Hurricane Iniki. Our staff archaeologist was able to field check the area on February 12, 1993. The area has a few trees down and land previously altered is now overgrown in various grasses. We did note a stack of lumber, covered with plastic. It appeared to have been placed there relatively recently. No other construction activities were seen.

#### Commission on Water Resource Management

The chronology of events provided on pages 5 and 6 of the submittal is accurate. Mr. Tom Leuteneker, the attorney representing Mr. Bonar, has indicated that he hopes to submit an after-the-fact stream channel alteration permit for stream crossings before the end of March 1993.

Our earlier comments to your office indicate that the issue of restoration of the stream channels should be reserved for the Commission on Water Resource Management. Appropriate recommendations for Water Code violations will be addressed by the Commission.

**Field Trip:**

A field trip was taken to the subject properties on July 7, 1993 to identify existing conditions after Hurricane Iniki. Staff from the Division of Forestry and Wildlife, Division of Land Management, Commission on Water Resource Management and the Office of Conservation and Environmental Affairs attended.

It provided an opportunity to comprehensively and collaboratively identify and discuss various elements relative to this matter.

**ANALYSIS**

Staff has assessed submitted agency reports and comments and notes that every division has identified major violations on the subject properties under regulations/rules related to the Conservation District, State Land, Historic Sites and Water Resources. However, this report will focus only on violations specifically related to Chapter 183-41 HRS and Chapter 171-6(12) HRS, and Title 13, Chapter 2, HAR. As there are unapproved alterations to State land, which is now under interim management by the Division of Forestry and Wildlife, an attempt has been made to review the most appropriate course of action. We do not address analysis and resolution of matters pertinent to agency responsibilities specific to Historic Sites and the Water Commission. However, staff does propose conditions in the staff recommendation to address these unresolved matters.

Following are the Conservation District violations which have been identified for each individual private parcel, as well as unauthorized entry and land use violations caused by the parties on the State parcel which surrounds them (TMK: 5-5-08: 02).

This land use inventory has resulted in the following:

TMK: 5-5-08: 01 (Work done on Bonar. However, now that Mr. Joe Thomson owns the parcel, he is identified as landowner.)

1. Major grubbing of vegetation
2. Major grading on parcel

TOTAL: 2 Violations

TMK: 5-5-08: 03 (Bonar)

1. Major grubbing of vegetation
2. Major grading on parcel
3. Development of earthen berm

TOTAL: 3 Violations

TMK: 5-5-08: 04 (Bonar)

1. Major grubbing of vegetation
2. Major grading on parcel
3. Development of earthen berm

TOTAL: 3 Violations

TMK: 5-5-08: 05 (Brown Trust as landowner)

1. Major grubbing of vegetation
2. Major grading on parcel
3. Relocated roadway development

TOTAL: 3 Violations

TMK: 5-5-08: 54 (Bonar)

1. Major grubbing of vegetation
2. Major grading on parcel

TOTAL: 2 Violations

TMK: 5-5-08: 02 (State)

1. Unauthorized entry and encroachment on State land in violation of Chapter 171-6(12) HRS
2. Major grubbing of vegetation
3. Major grading of portions of parcel
4. Grading of a drainage channel
5. Placement of four steel culverts (4 violations)
6. Excavation of river bottom near parcel 1
7. Improvements to roadway including filling in low areas and use of base course blue rock
8. Destruction of auwai
9. Placement of 1 steel culvert near parcel 5

TOTAL: 12 Violations (1 relative to Chapter 171 HRS,  
11 relative to Chapter 183-41 HRS)



In addition, grubbed material was stacked in several places and some were burned. Staff considers the stacking of cut vegetation and the use of the site for debris collection as one (1) violation.

The existing property owners are responsible for all illegal activities on their property. Furthermore, the Department has determined that Mr. Bonar is responsible for all the illegal activities on the State land in question.

In summary, the Department concludes that a total of twenty-five (25) violations have occurred, as specified under the then Chapter 183-41(e) HRS, (Enforcement):

"Any person violating this section or any rule adopted in accordance with this section shall be fined no more than \$500.00 in addition to administrative costs and damages to State land. After written notification from the Department, wilful violation of this section may incur an additional fine of up to \$500 per day for each day in which the violation persists."

Additionally, one violation is established relative to the unauthorized entry onto state land in violation of Chapter 171 HRS. It should be noted that violation fines relative to Chapter 183-41 HRS have recently been increased to \$2,000.00 per day by the State Legislature (1993) but that it was not in effect when this activity occurred.

Geographically, these violations are distributed according to the following:

- a) To Mr. Douglas Bonar: a total of eight (8) violations of Chapter 183-41 HRS on Tmks: 5-5-08: 03, 04 and 54;
- b) To Brown Trust: a total of three (3) violations of Chapter 183-41 HRS on Tmk: 5-5-08: 05;
- c) To Mr. Douglas Bonar: eleven (11) violations of Chapter 183-41 HRS and one (1) violation Chapter 171(6)-12 HRS, total twelve (12) on State land parcel Tmk: 5-5-08: 02;
- d) To Mr. Bonar: a total of one (1) violation of Chapter 183-41 HRS for the random multiple stacking and storage of cut vegetation debris;
- e) To Mr. Joe Thomson: as new landowner for Tmk: 5-5-08: 01, a total of two (2) violations of Chapter 183-41 HRS.

The Pre-Iniki and Post-Iniki recommendations and comments developed by the Division of Land Management, Division of Forestry and Wildlife, the Historic Preservation Division and the Commission on Water Resource Management have been incorporated within specific items for Board consideration. Staff has been collaborating with all of these parties in developing proposed recommendations for Board consideration.

In several letters to the Department, the landowners have indicated that they are willing to cooperate with the State to resolve this matter (Exhibits 12 and 13). Property owners Bonar and Brown Trust would like the existing relocated illegal roadway on State land to remain. However, it is the Department's consensus that the illegal roadway on State land shall be completely removed and the area returned to an acceptable natural condition.

Staff, therefore, recommends:

RECOMMENDATION:

That the Board find the property owners responsible for the subject violations, to include:

A. Violations

- 1) That Mr. Douglas Bonar be fined for a total of nine (9) violations of Chapter 183-41 HRS on Tmks: 5-5-08: 03, 04 and 54;
- 2) That Mr. Douglas Bonar be fined for a total of eleven (11) violations of Chapter 183-41 HRS and one (1) violation Chapter 171(6)-(12) HRS, total twelve (12) violations for State land parcel Tmk: 5-5-08: 02;
- 3) That a violation fine of \$500.00 be imposed on Mr. Bonar for each of the twenty-one (21) violations, totalling \$10,500.00;
- 4) That the Brown Trust be fined for a total of three (3) violations of Chapter 183-41 HRS on Tmk: 5-5-08: 05;
- 5) That a violation fine of \$500.00 be imposed on the Brown Trust for each of the three (3) violations totalling \$1,500.00;
- 6) That Joe Thomson be fined a total of two (2) violations of Chapter 183-41 HRS on Tmk: 5-5-08: 01;
- 7) That a violation fine of \$500.00 be imposed on Joe Thomson for each of the two (2) violations totalling, \$1,000.00;

- 8) That all fines imposed by the Board be submitted to the Department within sixty (60) days by certified check or cashier's check made payable to the Department;
- 9) That the subject landowners be instructed that the illegal roadway and all drainage culverts and other improvements on State land parcel TMK: 5-5-08: 02 be removed and/or restored within ninety (90) days to the satisfaction of the Department. If the violations are not cured within ninety (90) days from this Board action, then each day thereafter that the situation is not corrected shall be deemed a daily violation under Section 183-41(e) and Chapter 171 HRS, subject to the following: with good cause, as determined by the Department, the Board authorizes the Chairman to extend the ninety (90) day period provided that the landowners cooperate with the State effort to resolve the roadway alignment matter;
- 10) That the private landowners shall accurately survey, stake and flag their respective lots by a registered land surveyor within sixty (60) days and obtain the review and approval of the State land surveyor;
- 11) That the private landowners be instructed to submit within sixty (60) days, all necessary information, as required, to the Commission on Water Resource Management related to stream alteration activity;
- 12) That the private owners be instructed to submit within sixty (60) days all necessary information as required by the Historic Preservation Division to resolve outstanding issues related to destruction of historic sites.
- 13) That the landowners submit to the Department within thirty (30) days, a fire contingency plan for departmental approval;
- 14) That the landowners submit to the Department within sixty (60) days, a seeding and reforestation plan for the affected properties, including State land. The subject plan will include a weed control element and appropriate actions shall be immediately implemented by the landowners upon departmental approval;

- 15) That the landowners submit a debris disposal plan to the Department (Division of Forestry and Wildlife) within thirty (30) days for all remaining debris on the property. All remaining debris shall be appropriately disposed of, as ordered by the Department;
- 16) That the landowners submit a performance security bond of \$20,000 to the Department within sixty (60) days, in order to ensure that the land is restored to as natural a condition as possible;
- 17) That the landowners shall remove all materials, tools, etc. from the properties within thirty (30) days. Should the landowner desire to develop or improve their properties, appropriate permits (i.e. TV's/CDUA's) must be obtained from the Board and/or Department prior to implementation. In this regard, a comprehensive master plan, which includes a roadway access element for all private properties, and excludes use of State land, should be developed;
- 18) If any of the private parties fail to carry out this remedial activities required by this action, then the State upon 60 days advance written notice to the party in question, may carry out the remedy at the State's discretion. The State may then assess the private party for the cost of correcting the violation and place a lien against the private property for that amount.
- 19) That the landowners are informed that this action does not address outstanding potential violations related to historic preservation or water related matters.

B. ADDITIONAL FINES

In the event a landowner fails to pay the Board imposed fine, or fails to cure or correct any of the above violation(s), the Board authorizes the imposition of a statutory penalty interest rate on any unpaid fine to the extent allowable by law plus a daily fine of \$2,000.00 for each outstanding violation of Chapter 183-41 HRS.

C. ADMINISTRATIVE COSTS

That the Board assess each landowner for the Department's administrative costs on this matter (to be determined at Board meeting).

D. ATTORNEY GENERAL

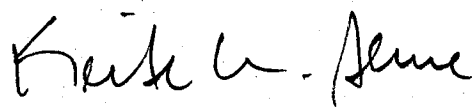
- 1) That if the landowners fail to comply with the above requirements after Notice of Board's decision, the matter shall be turned over to the Department of Attorney General for legal action including all administrative costs.
- 2) That Board action in this matter be subject to review by the Attorney General.

Respectfully submitted,

  
EDWARD E. HENRY  
Staff Planner

Attachment(s)

Approved for Submittal:

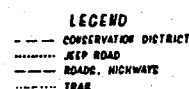


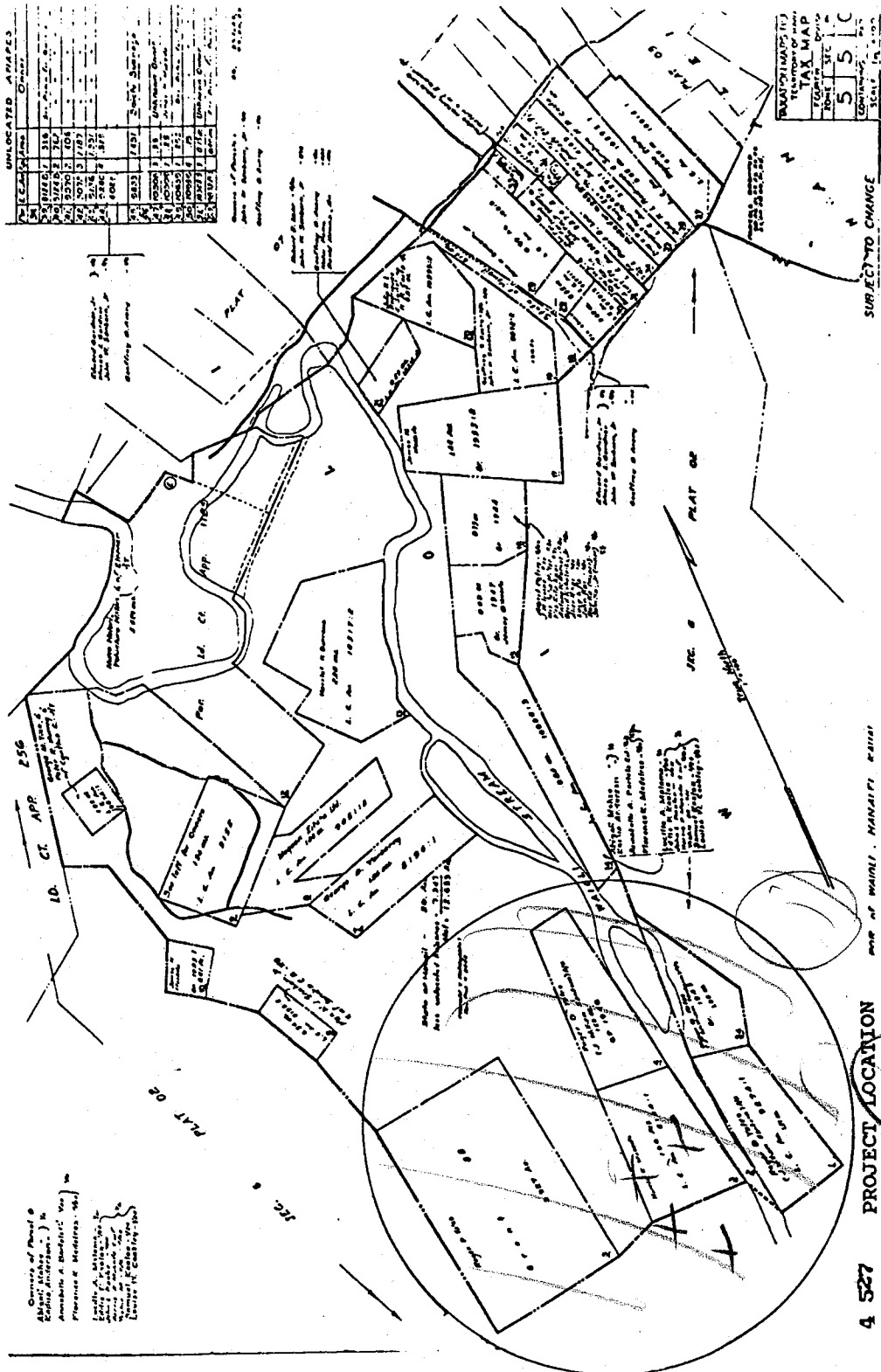
KEITH W. AHUE, Chairperson  
Board of Land and Natural Resources

CHRONOLOGY TIMEFRAME OF  
SIGNIFICANT EVENTS

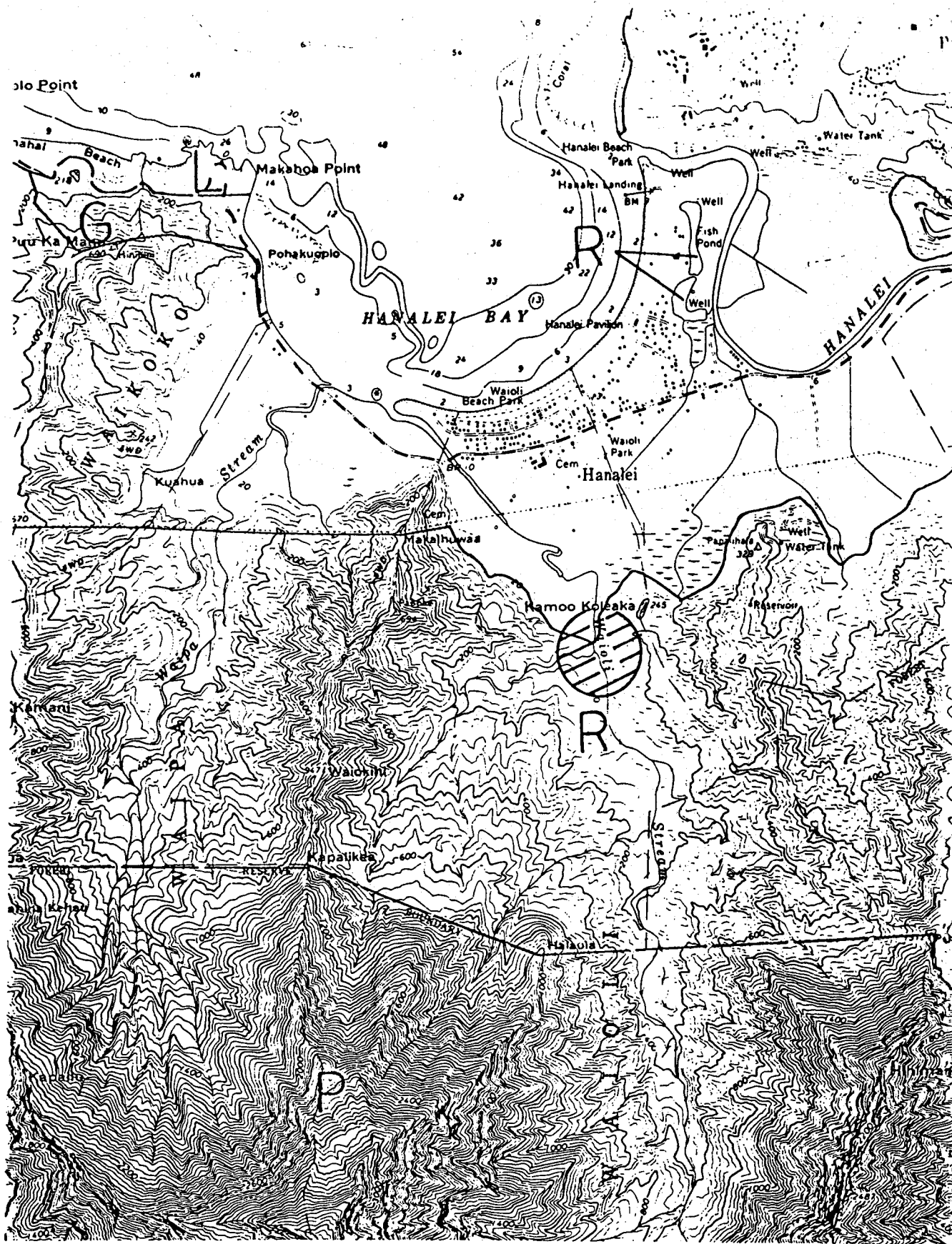
<u>EVENT</u>	<u>DATE</u>
1. Landowners (Bonar/Brown Trust) submit three CDUA's/EA's to Department	November 14, 1988
2. Board approved Temporary Variance (TV KA89-2) (Exhibit 6)	November 18, 1988
3. Applicants acknowledged Board imposed conditions (Exhibit 7)	December 2, 1988
4. Landowners withdraw CDUA's/EA's from processing (Exhibit 8)	December 23, 1988
5. Landowners petition LUC for District Boundary Amendment from Conservation to Agriculture	July 10, 1989
6. OCEA receives complaint regarding extensive grubbing/grading on properties	Mid October, 1989
7. OCEA receives DOCARE Report affirming major land activity	October 23, 1989
8. DLNR issues "Notice and Order" to property owners (Bonar/Brown Trust) (Exhibit 9)	October 24, 1989
9. DAGS Survey Office Field Survey	October 24-25, 1989
10. Landowners withdraw LUC petition	January 24, 1990
11. OCEA Prepares Board report on Land Use Review	September 11, 1992 (Due to Hurricane Iniki; meeting canceled)
12. Landowner Bonar sells TMK: 5-5-08: 01 to Joe Thomson	December, 1992

### PROJECT LOCATION









RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: MAIL ( ) PICKUP ( )

---

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

That I, BOYCE R. BROWN, JR. of 1509 Halekoa Drive, Honolulu, State of Hawaii, have made, constituted and appointed, and by these presents do make, constitute and appoint DOUGLAS (NMN) BONAR who residence is Hanalei, Kauai, Hawaii and whose mailing address is Post Office Box 306 Kapaa, Kauai, Hawaii 96746, my true and lawful attorney, to act in, manage and conduct my affairs, and for that purpose for me and in my name, place and stead, and for my use and benefit, and as my act and deed, to do and execute, or to concur with persons jointly interested with me therein, in the doing or executing of all or any of the following acts, deeds and things, that is to say:

1. To buy, receive, lease, accept or otherwise acquire; to sell, convey, mortgage, hypothecate, pledge, quitclaim, lease or otherwise encumber and dispose of; or to contract or agree for the acquisition, disposal or encumbrance of; the real property described herein, or any custody, possession, interest

or right therein, including easements thereto or thereon, upon such terms as my said attorney shall think proper;

2. To take, hold, possess, lease, let or otherwise manage the real property described herein, or any interest therein; to eject, remove or relieve tenants or other persons from and recover possession of, such property by all lawful means; and to maintain, protect, preserve, insure, remove, store, transport, repair, rebuild, modify or improve the same or any part thereof;

3. To make, do and transact all and every kind of business of whatever kind or nature arising with respect to or related to the real property described herein including but not limited to the payment of taxes or other obligations with respect to the property.

4. To make, endorse, accept, receive, sign, seal, execute, acknowledge and deliver deeds, leases, assignments, agreements, certificates, mortgages, releases of mortgages, hypothecations, checks, notes, bonds, vouchers, receipts and such other instruments in writing of whatever kind and nature as may be necessary, convenient or proper with respect to the real property described herein.

5. To institute, prosecute, defend, compromise, arbitrate and dispose of legal, equitable or administrative hearings, actions, suits, attachments, arrests, distresses or other proceedings, or otherwise engage in litigation in connection with the real property described herein.

6. To engage and dismiss agents, counsel and employees, and to appoint and remove at pleasure any substitute for, or agent of my attorney, with respect to all or any of the matters or things herein mentioned and upon such terms as my attorney shall think fit;

7. To prepare, execute and file real property tax returns, claims for refunds and other governmental reports, applications, requests and documents;

GIVING AND GRANTING unto my said attorney full power and authority to do and perform all and every act, deed, matter and thing whatsoever in and about the real property described herein as fully and effectually to all intents and purposes as I might or could do in my own proper person if personally present, the above specifically enumerated powers being in aid and exemplification of the full and complete power herein granted with respect to the real property described herein and not in limitation or definition thereof; hereby ratifying all that my said attorney shall lawfully do or cause to be done by virtue of these presents.

Notwithstanding the generality of the foregoing the powers granted by this limited power of attorney may only be exercised with respect to that certain parcel of real property being Grant 88, area 3.927 acres situated at Waioli, Halelea, Kauai, State of Hawaii more fully described as follows:

ALL OF THAT CERTAIN parcel of land designated by Grant 88 to KOI situate approximately 3300 feet South of Kuhio Highway at

Waioli, Hanalei, Kauai, Hawaii; tax map key: 4th Div: 5/5/08:5,  
and more fully described as follows:


BEGINNING at a 1-1/2" pipe at the Northeast corner of this  
lot and located within the Government Land, the coordinates of  
this said point of beginning referred to Government Survey  
Triangulation Station "PAPALIHALA" being 1849.29 feet South and  
3221.23 feet West, running azimuths measured clockwise from  
true South:

- |             |   |
|-------------|---|
| 1. 353° 09' | 528.13 feet along Government Land<br>to a 1-1/2" pipe;  |
| 2. 84° 27'  | 330.00 feet along Government Land<br>to a 1-1/2" pipe;  |
| 3. 174° 27' | 528.00 feet along Government Land<br>to a 1-1/2" pipe;  |
| 4. 204° 27' | 318.00 feet along same to the<br>point of beginning and containing<br>an area of 3.028 acres. |

SUBJECT HOWEVER to a possible roadway easement over and across  
said property;

SUBJECT FURTHER to the rights or reservations stated in Grant  
88 to KOI.

IN WITNESS WHEREOF, I have herunto set my hand this 10<sup>th</sup> day  
of November, 1988

  
BOYCE R. BROWN, JR.

STATE OF HAWAII                                 )  
  )  
CITY AND COUNTY OF HONOLULU            )      SS.

On this 10<sup>th</sup> day of November, 1988, before me personally appeared BOYCE R. BROWN, JR., to be known to be the person described in and who executed the foregoing instrument, and acknowledged that he executed the same as his free act and deed.

Robert W. Ehrhardt  
Notary Public, State of Hawaii  
My commission expires: 11-11-90



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
P O BOX 621  
HONOLULU, HAWAII 96809

DEPARTMENT OF LAND AND NATURAL RESOURCES

LIBERT R. LANDGRAF  
DEPUTY

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

FILE NO.: TV-KA-89-2  
DOC. NO.: 4615E

November 18, 1988

Board of Land and  
Natural Resources  
State of Hawaii  
Honolulu, Hawaii

Gentlemen:

REGARDING: Request for Temporary Variance to Permit Limited  
Work to be Done on Kuleana in Waioli Valley, Kauai,  
TMK: 4-5-5-08: 1, 3, 4, and 54

Douglas Bonar and Boyce Brown Trust are the owners of the five Kuleana parcels in Waioli Valley, Kauai, Hawaii. All five parcels are designated "conservation". They lie just on the conservation side of the agriculture/conservation use designation line.

They have filed a Conservation District Use Application (CDUA). They appear to be caught in a conceptual problem. In order to file a complete CDUA, they are required to submit site plans, construction plans, and maintenance plans. However, these plans cannot be prepared until the land is cleared of hau thickets, bamboo, scrub guava, bracken fern, and underbrush in order to verify the accuracy of the topography and site the proposed improvements and locate the major trees on a map.

The applicants desire to take advantage of the unusually dry weather to clear the land of the hau, bamboo and scrub growth. There are several large mango trees on the property. These would not be touched except to cut off dead branches.

The grubbing and minor clearing would be done using a small bulldozer and similar equipment. An environmental assessment has been prepared. They believe all existing archaeological features have been located and flagged and will not be destroyed. Any new features discovered during clearing also will be marked and preserved.

Inasmuch as the clearing they propose will not harm anything and is necessary to develop accurate plans for future house construction, they request that they be granted a temporary variance for such work.

CDUA KA-90-E-31

page 1 of 3  
EXHIBIT 6

Staff Analysis:

The applicants did submit a CDUA for Kuleana homes on the parcels. Inasmuch as all the parcels are under 10 acres, there is a strong possibility that non-conforming use on the parcels will be recommended by staff at the appropriate time.

As such, it seems reasonable that a Temporary Variance, which would allow for a more complete application, be granted. We note that the basic information obtained by this Variance would then be incorporated into the application.

In this manner, staff should they eventually recommend approval, will be in a better position to insure appropriate conditions are also in place.

As such, Staff recommends as follows:

RECOMMENDATION:

That the Board approve a Temporary Variance to permit limited work to be done on Kuleana lands in Waioli Valley, Kauai, TMK: 4-5-5-08: 1, 3, 4 and 54 under the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health Administrative Rules;
4. That failure to provide information gained in this Variance to complete the current application be cause for rejection of the application;
5. That the Variance be limited to minor clearing and grubbing;
6. That no cutting down of any trees be authorized under this Variance;
7. That failure to comply with any of these conditions shall render this Temporary Variance null and void; and



Board of Land and  
Natural Resources

TV-KA-89-2

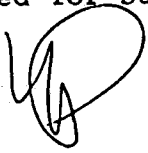
8. Other terms and conditions as prescribed by the  
Chairperson.

Respectfully submitted,



ROGER C. EVANS  
Administrator

Approved for submittal:



WILLIAM W. PATY



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 621  
HONOLULU, HAWAII 96809

NOV 29 1988

WILLIAM W. PATY, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

LIBERT K. LANDGRAF  
MANABU TAGOMORI  
RUSSELL N. FUKUMOTO

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

FILE NO.: TV-KA-89-2  
DOCUMENT NO.: 4673E

Mr. Douglas Bonar  
P. O. Box 306  
Kapaa, Kauai 96746

Dear Mr. Bonar:

We are pleased to inform you that on November 18, 1988 the Board of Land and Natural Resources approved your request for Temporary Variance to permit limited work, as you represented, to be done on Kuleana in Waioli Valley, Kauai, TMK: 4-5-5-08: 1, 3, 4, and 54. The request was approved subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules and regulations of the Federal, State and County governments, and applicable parts of Section 13-2-21, Administrative Rules, as amended;
2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;
3. The applicant shall comply with all applicable Department of Health Administrative Rules;
4. That failure to provide information gained in this Variance to complete the current application be cause for rejection of the application;
5. That the Variance be limited to minor clearing and grubbing;
6. That no cutting down of any trees be authorized under this Variance;
7. That failure to comply with any of these conditions shall render this Temporary Variance null and void; and

Mr. Douglas Bonar

- 2 -

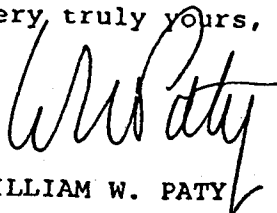
TV-KA-89-2

8. Other terms and conditions as prescribed by the Chairperson.

Please acknowledge receipt of this permit, with the conditions noted above, by signing in the space provided below and returning a copy to us. Retain the original for your records.

Should you have any questions on any of these conditions, please feel free to contact our Office of Conservation and Environmental Affairs staff at 548-7837.

Very truly yours,

  
WILLIAM W. PATY

Receipt acknowledged:

  
Applicant's Signature

12/2/88  
Date

cc: Boyce Brown, Esq.  
Kauai Board Member  
Kauai Land Agent  
Kauai Dept. of Planning

JAN 6 1989

FJII NO.: 2V-KA-89-2  
DOC. NO.: 4869E

Mr. Douglas Bonar  
P. O. Box 200  
Kapa, Kauai 96740

Dear Mr. Bonar:

This letter serves to clarify the subject Temporary Variance to permit limited work, as you represented, to be done on five Kuleanas in Waioli Valley, Kauai, TRK: 4-5-5-08: 1, 2, 4, 5 and 54.

As you were informed by the attached letter of November 20, 1988, the request was approved by the Board subject to eight conditions. Please be informed that described work may be initiated on TRK: 4-5-5-08: 08 subject to all applicable conditions contained therein.

Should you have any questions, please feel free to contact our Office of Conservation and Environmental Affairs staff at 548-7827.

Very truly yours,

/S/ WILLIAM W. PATY

WILLIAM W. PATY

Attachment

Filed:

EAZ

CDUA KA-90-E-31

page 3 of 3  
EXHIBIT 7

Douglass Bonar  
P. O. Box 326  
Kapaa, Hawaii; Hawaii 96746  
December 22, 1988

Mr. William W. Paty  
State of Hawaii  
Department of Land and Natural Resources  
P. O. Box 621  
Honolulu, Hawaii 96809

RE: C.D.U.A. PERMITS # KA-2222, KA-2223, KA-2224

Dear Mr. Paty:

I am writing this letter on behalf of myself as well as Mr. Boyce Brown. Both Mr. Brown and myself have previously submitted C.D.U.A.'s to your office for your review on November 14, 1988.

It has been brought to my attention by Mr. Edward Henry that the offices of D.L.N.R. would rather have a more complete application before their disbursement and proper processing. The weather has not been cooperative this last six weeks, and the needed data for addition to these C.D.U.A.'s was not able to be submitted within this time.

Both Mr. Brown and myself desire to withdraw our applications at this time. Hopefully, more favorable weather will permit us to acquire the needed additional information to these C.D.U.A.'s. These applications will be re-submitted as soon as the required information is available. We hope to complete the updated applications within the next month.

Thankyou very much for your time.

Very truly yours,

*Douglas Bonar*

*(D. Bonar for) Boyce Brown Jr*

Douglass Bonar

Boyce Brown

AIHEE  
H HAW



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 621  
HONOLULU, HAWAII 96809

October 24, 1989

WILLIAM W. PATY, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

LIBERT K. LANDGRAF  
MANABU TAGOMORI  
RUSSELL N. FUKUMOTO

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

FILE NO.: KA-90-25  
DOC. NO.: 6727E

NOTICE AND ORDER

Mr. Douglas Bonar  
P. O. Box 306  
Kapaa, Kauai 96746

Dear Mr. Bonar:

SUBJECT: Illegal Activity Within the Conservation District  
and on State-owned Land

NOTICE IS HEREBY GIVEN that you are in violation of Title 13, Chapter 2, entitled Administrative Rules of the Department of Land and Natural Resources, State of Hawaii, Providing for Land Use Within the Conservation District, enacted pursuant to Chapter 183-41, Hawaii Revised Statutes. Additionally, you are in violation of Chapter 171-6(12), HRS, and Title 13-221 entitled Administrative Rules "Unencumbered Public Lands", as well as Chapter 174(c)-71, H.R.S. Title 13 Chapter 169 entitled Administrative Rules "Water Resources."

An inspection of the premises on which your activity is being conducted occurred on October 12, 1989, by the Department of Land and Natural Resources.

The premises, Tax Map Key: 4-5-5: 08 is within the Conservation District and is classified as Resource Conservation Subzone. The Resource Conservation Subzone does not permit 1) roadway grading, 2) roadway cutting, 3) roadway improvements, 4) major land clearing, 5) major land grubbing, 6) stream alteration, and 7) use of land as a rubbish disposal site without the written permission of the Department of Land and Natural Resources and/or Commission on Water Resource Management.

No permit has been issued to you by the Department of Land and Natural Resources for the above activity.

Additionally, you are in violation of Conditions Five (5) and Six (6) of the Temporary Variance (TV-KA-89-2). Approved by the Board on November 18, 1988, said Conditions limit the work on the Property to Minor Clearing and Grubbing, and, that no cutting down of any trees is authorized. As such, and under Condition Seven (7), your temporary variance is hereby null and void.

YOU ARE HEREBY ORDERED TO CEASE any further activity on the premises within the Conservation District. Should you fail to cease such illegal activity immediately and restore the premises to its natural state, the Department of Land and Natural Resources shall seek a court order to enforce Title 13, Chapters 2, 221, and Chapter 13-167 of the State Water Code to include a two thousand (\$2,000.00) dollar fine per day, per violation, in addition to all administrative costs, after receipt of this NOTICE AND ORDER.

Additionally, failure to comply with this NOTICE AND ORDER immediately will result in the State Attorney General seeking injunctive relief.

It is suggested that you contact our Office of Conservation and Environmental Affairs at 548-7837 for any further information.

Very truly yours,

DEPARTMENT OF LAND AND  
NATURAL RESOURCES

By: 

WILLIAM W. PATY  
Chairperson and Member  
Board of Land and  
Natural Resources  
State Commission on  
Water Resource Management

Encl.

cc: Board Members  
Commission Members  
Land Management  
DOCARE  
DOFAW  
DOWALD

JOHN WAIHE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

P. O. BOX 821  
HONOLULU, HAWAII 96808

October 24, 1989

WILLIAM W. PATY, CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES

DEPUTIES

LIBERT R. LANDGRAF  
MANABU TAGOMORI  
RUSSELL N. FUKUMOTO

AQUACULTURE DEVELOPMENT  
PROGRAM  
AQUATIC RESOURCES  
CONSERVATION AND  
ENVIRONMENTAL AFFAIRS  
CONSERVATION AND  
RESOURCES ENFORCEMENT  
CONVEYANCES  
FORESTRY AND WILDLIFE  
LAND MANAGEMENT  
STATE PARKS  
WATER AND LAND DEVELOPMENT

FILE NO.: KA-90-25  
DOC. NO.: 6727E

NOTICE AND ORDER

Boyce R. Brown, Esquire  
222 Merchant Street  
Honolulu, HI 96813

Dear Mr. Brown:

SUBJECT: Illegal Activity Within the Conservation District  
and on State-owned Land

NOTICE IS HEREBY GIVEN that you are in violation of Title 13, Chapter 2, entitled Administrative Rules of the Department of Land and Natural Resources, State of Hawaii, Providing for Land Use Within the Conservation District, enacted pursuant to Chapter 183-41, Hawaii Revised Statutes. Additionally, you are in violation of Chapter 171-6(12), HRS, and Title 13-221 entitled Administrative Rules "Unencumbered Public Lands", as well as Chapter 174(c)-71, H.R.S. Title 13 Chapter 169 entitled Administrative Rules "Water Resources."

An inspection of the premises on which your activity is being conducted occurred on October 12, 1989, by the Department of Land and Natural Resources.

The premises, Tax Map Key: 4-5-5: 08 is within the Conservation District and is classified as Resource Conservation Subzone. The Resource Conservation Subzone does not permit 1) roadway grading, 2) roadway cutting, 3) roadway improvements, 4) major land clearing, 5) major land grubbing, 6) stream alteration, and 7) use of land as a rubbish disposal site without the written permission of the Department of Land and Natural Resources and/or Commission on Water Resource Management.

CDUAKA-90-E-31

page 3 of 4  
EXHIBIT 9



No permit has been issued to you by the Department of Land and Natural Resources for the above activity.

Additionally, you are in violation of Conditions Five (5) and Six (6) of the Temporary Variance (TV-KA-89-2). Approved by the Board on November 18, 1988, said Conditions limit the work on the Property to Minor Clearing and Grubbing, and, that no cutting down of any trees is authorized. As such, and under Condition Seven (7), your temporary variance is hereby null and void.

YOU ARE HEREBY ORDERED TO CEASE any further activity on the premises within the Conservation District. Should you fail to cease such illegal activity immediately and restore the premises to its natural state, the Department of Land and Natural Resources shall seek a court order to enforce Title 13, Chapters 2, 221, and Chapter 13-167 of the State Water Code to include a two thousand (\$2,000.00) dollar fine per day, per violation, in addition to all administrative costs, after receipt of this NOTICE AND ORDER.

Additionally, failure to comply with this NOTICE AND ORDER immediately will result in the State Attorney General seeking injunctive relief.

It is suggested that you contact our Office of Conservation and Environmental Affairs at 548-7837 for any further information.

Very truly yours,

DEPARTMENT OF LAND AND  
NATURAL RESOURCES

By: 

WILLIAM W. PATY  
Chairperson and Member  
Board of Land and  
Natural Resources  
State Commission on  
Water Resource Management

Encl.

cc: Board Members  
Commission Members  
Land Management  
DOCARE  
DOFAW  
DOWALD

ROYCE R. BROWN, JR.  
P. O. Box 2190  
Honolulu, Hawaii 96805-2190

November 16, 1989

Mr. William W. Paty  
Chairperson and Member  
Board of Land and National Resources  
P. O. Box 621  
Honolulu, Hawaii 96809

Re: File No.: KA-90-24  
Doc. No.: 6727E

Dear Mr. Paty:

The cease and desist order signed by you which Mr. Roger Evans delivered to my secretary has reached me in Europe. For the record, I do not own the four-acre parcel in Waioli. It is owned by a trust set up ten years ago for my son. I am not the trustee. I am, however, the attorney for the trust and I am able to respond on its behalf.

I have no idea what prompted the notice of violation concerning work done on the four-acre parcel which the DLNR feels is in violation of various regulations and in excess of the grubbing permission granted in 1988. I have been out of Hawaii since November 15, 1988. I know that before I left Hawaii to travel all of the trees had been surveyed and marked and both a botanical and archaeological study had been made of both the four-acre parcel and those of Mr. Bonar. In my experience Mr. Bonar is extremely conscientious so I would be willing to bet that not one tree has been cut nor an archaeological site disturbed. I would like to point out that almost all of the approach road as well as significant parts of the property are not within the conservation zone.

Obviously, however, the DLNR feels strongly that wrong was done to cause the DLNR to issue the cease and desist notices. In that regard, I want to state for the record:

1. Neither I nor the trustee know what was done

Mr. William Paty  
Department of Land and Natural Resources  
Page Two

on the four acres.

2. Neither I nor the trustee requested or authorized any work to be done on the four acres, except that which was authorized in the permit.

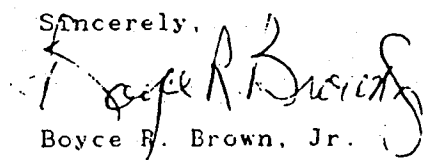
3. If I had known that any work was being done in violation of any law, regulation or permit condition, it would have been stopped.

I have learned that members of your staff, in particular the head of forestry for Kauai, has widely circulated a letter accusing me of knowingly violating the law. That is absolutely untrue and constitutes libel per se. This is something we can sit down and discuss upon my return. In the meantime, however, I do not take kindly to such reckless abuse of my reputation. I ask that you advise your staff to stop before they dig themselves into a deeper hole.

Over the last twenty years I have enjoyed excellent relations with the Board of Land and Natural Resources. In that time the Board has learned that even though we may not see eye-to-eye on various matters, I always keep my word and I can be trusted. The Board should know that I am not a scofflaw. My good name is important to me. I would appreciate it if you would ask your staff to circulate this letter to the Board members and others to whom the notice of violation was circulated.

The Board of Land and Natural Resources may reach me by writing to P. O. Box 2190, Honolulu, Hawaii 96805-2190. Mail to that address is forwarded to me in Europe. However I am traveling quite a lot and sometimes it takes up to six weeks for mail to catch up to me. To the extent that you are able to do so, please give me as much lead time as possible to reply to whatever you mail to me.

Sincerely,

  
Boyce R. Brown, Jr.

BRB:am

August 22, 1990

Mr. William Paty  
Chairman  
Board of Land and Natural Resources  
Dept. of Land and Natural Resources  
1151 Punchbowl Street  
Honolulu, Hawaii 96813

Re: Possible Conservation District Use  
Regulation Violations With Respect  
To Kuleanas in Waioli Valley, Kauai,  
TMKs: 5-5-8-1, 54, 3, 4 and 5

Dear Mr. Paty:

For the last twenty months I have been living in Europe. Prior to leaving for Europe, I obtained permission to clear scrub growth from the referenced parcels in order to survey the parcels, prepare a topographic map and have animal, plant and archeological surveys conducted. All of these things were necessary in order to prepare a conservation district use application to build on the parcels. A trust established for the benefit of my oldest son owns one of the parcels (TMK 5-5-8-5) and the rest are owned by Douglas Bonar. During my absence, Mr. Bonar was supposed to take care of the clearing work and arrange for the various surveys.

While in Europe, I received numerous documents which indicated that Mr. Bonar had gone beyond the scope of the work which had been authorized. Since I was in Europe, I was at a disadvantage because I had no way of knowing whether violations had occurred unless I looked at the parcels. I am one of the few people who had walked over all of these parcels before Mr. Bonar did his work on them.

Mr. William Paty  
Page 2

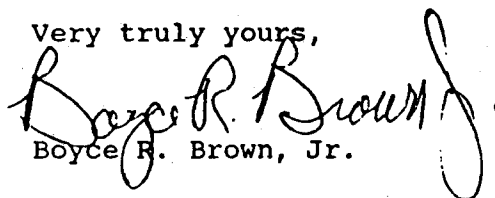
When I returned to Hawaii, I went to Kauai almost at once to look at the parcels. It is clear that what was done by Mr. Bonar exceeded the scope of the work that had been authorized although not nearly as extensively as the citations issued by your Department would indicate.

Rather than argue about the matter and go through lengthy contested case proceedings, I would like to take a positive approach and meet with you and those in DLNR most concerned with this matter to see if we can't resolve things to everyone's satisfaction. I realize your schedule is extremely tight right now and your personal participation may be limited. However, if you feel my suggestion has merit, perhaps you could delegate to Roger Evans or some other suitable person the responsibility for scheduling such a meeting and assembling the appropriate personnel from your Department.

Unfortunately, business requires me to go to the mainland next week. I was hoping to get things moving toward a solution this week if possible if a meeting such as I suggest can be arranged that quickly.

My schedule is free so I am at your disposal as far as a meeting time is concerned. I can be reached at 599-3811.

Very truly yours,

  
Boyce R. Brown, Jr.

BRB:co

DPW  
DCM  
HPO

3272

CARLSMITH BALL WICHMAN MURRAY CASE MUKAI & ICHIKI

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING LAW CORPORATIONS

2145 WELLS STREET

WELLS STREET PROFESSIONAL BUILDING, SUITE 201

POST OFFICE BOX 1086

WAILUKU, MAUI, HAWAII 96793

TELEPHONE (808) 242-4535

FAX (808) 244-4974

July 1, 1993

HILO OFFICE

TELEPHONE (808) 935-6644  
FAX (808) 935-7975

KONA OFFICE

TELEPHONE (808) 329-6464  
FAX (808) 329-9450

MAUI OFFICE

TELEPHONE (808) 244-4535  
FAX (808) 244-4974

GUAM OFFICE

TELEPHONE (671) 472-6813  
FAX (671) 477-4375

SAIPAN OFFICE

TELEPHONE (670) 322-3455  
FAX (670) 322-3368

HONOLULU OFFICE  
TELEPHONE (808) 523-2500  
FAX (808) 523-0842

LOS ANGELES OFFICE  
TELEPHONE (213) 955-1200  
FAX (213) 623-0032

LONG BEACH OFFICE  
TELEPHONE (310) 435-5631  
FAX (310) 437-3760

MEXICO CITY OFFICE  
TELEPHONE (52-5) 281-2428  
FAX (52-5) 281-2196

WASHINGTON, D.C. OFFICE  
TELEPHONE (202) 628-4566  
FAX (202) 628-4845

John Keppeler, II  
Department of Land and  
Natural Resources  
P. O. Box 621  
Honolulu, Hawaii 96809

RE: DLNR Land Use Review,  
File No. KA-90E-31/Doc. I.D.: 1350

Dear John:

This matter involves various offices and departments of the State of Hawaii, including: the Department of Land and Natural Resources, the Division of Water Resource Management, the Division of Forestry and Wildlife, the Historic Preservation Division, and the Office of the Attorney General. All of these entities are interested in the Waioli Valley on Kauai.

The State of Hawaii owns Tax Key 5-5-08-2(4) within which are located the five kuleanas which are the subject of this case. The State also owns a large tract of land mauka, which may one day be opened as a recreational area by the the Division of Forestry and Wildlife. The State needs access into this area through the Kobayashi property makai. The five kuleanas also need access through the State property. Water resources and archeological sites exist on these properties.

Doug Boner did certain work on these properties, which work is the subject of this case. The most significant and obvious work was the relocation and improvement of the road through this area.

July 1, 1993  
Page -2-

This road must be there to access these parcels. Thus so much of that improvement as is necessary for the creation of a serviceable road should be retained.

If a monetary fine is to be imposed, it is the request of the respondents that that fine be paid by doing work of an equivalent value; that is by doing additional work to improve the road. Also it is the respondents plan to bring a waterline up from the Kuhio Highway. That water can be made available to the State for its water needs.

Also the respondents would like a blanket solution to the concerns of all of the State entities, so that all of the problems can be solved in a comprehensive manner. Thus the respondents would like a stay or delay of the imposition of any sanctions by any one State entity, until we have agreement on a complete solution.

Please give these comments your thoughtful consideration.  
Thank you.

Very truly yours,



TOM C. LEUTENEKER

TCL:mmw

cc: Boyce Brown  
Douglass Bonar  
Joseph Thomson  
Michael and Myra Kuntz

July 8, 1993

Joseph D. Thomson  
P.O. Box 3236  
Princeville, Hanalei  
Kauai, HI. 96722  
826-6691, FAX 826-6130

RE: File No.: KA-90E-31

To the Board of land and Natural Resources,

This letter is to acknowledge your letter dated June 17, 1993 which I received via certified mail.

Since receiving the above mentioned letter I have had two discussions with Mr. Ed Henry of your staff. The last occurred on the afternoon of 7/7/93 in the valley of Waioli.

Mr. Henry mentioned that he was concluding his report to the Board and would appreciate a letter from me explaining my position in relation to the violations in question.

I purchased lot 5-5-08: 01 last year. The lot was approximately in the same condition as it is today.

My reasons for purchasing the property include:

1. The abundance of water.
2. The fact that the land was historically used for raising taro.
3. The land is in the conservation zone.
4. It is above the tsunami flood zone

It is my belief that in the long term these elements will prove themselves to be of great personal value in creating a home that will blend with the environment around it. My children will perhaps thank me, as the world continues to become a more crowded place.

My long range plans would be to initially raise dry land taro. From that base of tropical agriculture then shift to wetland varieties. Over a period of years slowly expand the patches to include aquaculture on a small scale. Somewhere on that time line build a single family residence. These uses are permitted within the conservation zoning as the property was on the tax rolls back in the late 1950's.

VEED  
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05:2 14 81 00:00

02/11/93

CDUAKA-90-E-31

page 1 of 2  
EXHIBIT 13



It is now my understanding that there were two violations on the land that I presently own. These concern themselves with the removal of vegetation and the grubbing of the top layer of soil.

Involving the issue of the vegetation it would appear that a thick ground cover has returned. It would be my desire to, through good non chemical agricultural practices, to reduce the weeds that have encroached from the surrounding hillsides.

As this land historically has been used for taro or rice its contours would reflect the broad and shallow terracing that the natural grade would require to hold water. It would be my desire to bring back the terracing if it is still not there under the existing ground cover. In so doing the issue of the vegetation can be dealt with in a way that accomplishes settling both violations at the same time. It would perhaps be best if the issue of these two problems could be resolved in the process of the CUD A permit that will be filed for my property's master plan. In this way I can work with the state to our mutual satisfaction.

As to the matter of the other violations that exist between Mr. Douglas Bonar in regards to the State lands, and others, that is the responsibility of Mr. Bonar. In our negotiations concerning the purchase of lot 5-5-08: 01 it was agreed that this was to be the case.

I am aware that in the purchase of the lot that I am, in the words of Mr. Henry 'inheriting' some of Mr. Bonar's problems that exist on my land.

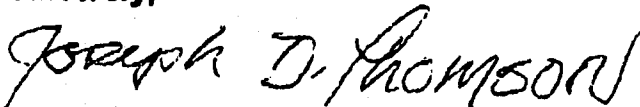
It is my intent to work with the State and its different agencies. Being that the land is located in the conservation district this is a necessity. Given that my purpose in owning this kuleana is long term and the intent is to be not at odds with the environment I feel the opportunity is there to establish a good rapport with the State.

I am representing myself in conjunction with the State Attorney General's Office in the suit concerning access. It is my feeling that I have been able to contribute a great deal to the ultimate resolution of that long standing suit. And in the process save the State much time and money by avoiding a lengthy condemnation suit to gain access for the public.

It is my desire to not be an adversary with regards to the State. It is for that reason I am representing myself in this matter at this time.

Thank you for your consideration in these matters. If you have any questions please feel free to call. I look forward to meeting with the Land Board at the July 23, 1993 meeting in Lihue.

Sincerely,



Joseph D. Thomson

JT: cc: Tom Leutenker



U.S. Department of Justice

United States Attorney  
District of Idaho

Mailing Address:

P. O. Box 32  
Boise, ID 83707

Street Address:

First Interstate Center  
877 W. Main, Suite 201  
Boise, ID 83702

COMMERCIAL 208/334-1211  
MAIN FAX 208/334-9375  
CVDIV FAX 208/334-1414  
CR DIV FAX 208/334-1413  
DTF DIV FAX 208/334-9018

VIA FACSIMILE

January 15, 1997

Michael D. Wilson  
State of Hawaii, Dept. of Lands  
and Natural Resources  
P. O. Box 621  
Honolulu, HI 96809

RE: U.S. v. Michael J. Kuntz

Dear Mr. Wilson:

Our office has been in contact with Mr. Ed Henry concerning payment of the fines and penalties of \$6,100.25 assessed against three lots located on Kauai owned by Mike and Myra Kuntz. Your office has been holding, since February of 1996, a check in payment of these fines and penalties made payable to your office from the United States Marshals Service.

This letter will authorize you to cash the check conditioned upon the agreement by your office that payment of the \$6,100.25 is in full and complete discharge of all obligations of the Kuntzes and Island Land Company relating to the three lots, being TMK Nos. 5-5-08:03, 04 and 05, and that no future fines will be assessed or claims made against the Kuntzes and Island Land Company, or any successor in interest, relating to work on or use made of the three lots prior to this date.

The lots are currently for sale and disclosure will be made to any prospective buyer of the need to file CDUA's for all proposed land uses, and problems with culverts and road access.

The \$6,100.25 check you are holding is non-negotiable one year after the date of issuance.

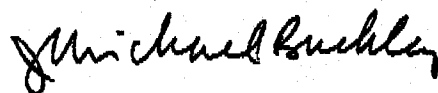
EXHIBIT 6 1.42

JAN 15 1997  
January 15, 1997  
Page 2

Therefore, your prompt response is appreciated.

Very truly yours,

BETTY H. RICHARDSON  
UNITED STATES ATTORNEY  
By



J. Michael Buckley  
Assistant U.S. Attorney

cc: Ed Henry

○ 2142

NOV 29 1996

REF:LD:EH

Mr. Anthony G. Hall  
United States Attorney  
U.S. Department of Justice  
District of Idaho  
P.O. Box 32  
Boise, ID. 83707

Dear Mr. Hall:

SUBJECT: Resolution of Outstanding Monetary Fines for  
Illegal Land Use, Waioli Valley, Kauai (TMK:  
5-5-08: 03, 04 and 05)

Thank you for your letter of August 19, 1996, which gave preliminary authorization to release a Justice Department check for \$6,100.25, in satisfaction of penalties imposed by the Hawaii Board of Land and Natural Resources (Board) for illegal land use on the subject parcels. Payment of the fine will resolve some but not all outstanding issues related to the illegal land use.

As you are aware, access to the subject properties is through an illegal road on State land. The Board mandated that the illegal roadway and four illegal culverts be removed and that a new access roadway be designed over private lands. A Conservation District Use Application and Environmental Assessment will need to be submitted to the department to process this land use, pursuant to the requirements of Chapter 13-5, Hawaii Administrative Rules.

The subject parcels are within the State Conservation District, Resource Subzone. If prospective bidders for the properties desire residential land use, they must submit a Conservation District Use Application (CDUA) and Environmental Assessment for each of the parcels, pursuant to the requirements of Chapter 13-5, Hawaii Administrative Rules. Particular attention should be given to Exhibit 4, Single Family Residential Standards.

You requested a contact person on Kauai to assist your real estate agent to gain access to the properties through a locked access gate. You may wish to contact Mr. Joseph Kobayashi, who owns the land which the access road transverses. Mr. Kobayashi can be reached by telephone at (808)822-9000.

EXHIBIT 7 1 of 2

Mr. A. Hall

- 2 -

To authorize the final release of the submitted check please contact Ed Henry directly . Acceptance of the check will satisfy the land use monetary fine. It will not resolve the illegal roadway-culverts matter. Nor does payment of the fine in any way authorize guarantee residential or any other land use.

A copy of Chapter 13-5 HAR, a CDUA application form and Environmental Assessment requirements are enclosed for your future use.

If you have any further questions, please contact Edward Henry at (808)587-0377.

Aloha,

/S/ MICHAEL D. WILSON

MICHAEL D. WILSON

Enclosures

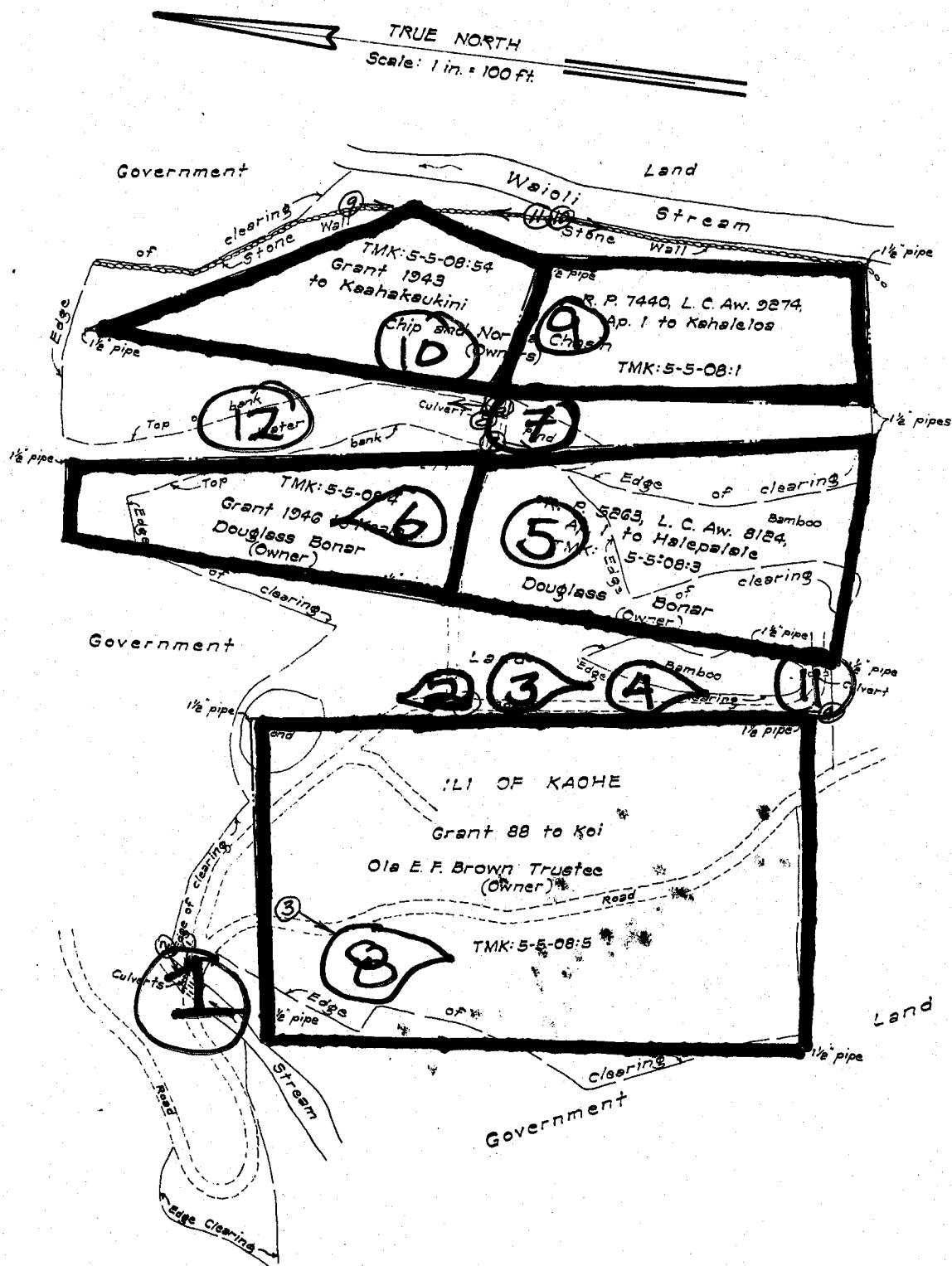
xc: William Tam, Deputy Attorney General  
Sam Lee, KDLO  
David Higa, CWRM  
Don Hibbard, HPD  
Ed Petteys, DOFAW (Kauai)

bxc: Kauai Board Member

EH:skk

202

PHOTO KEY



STATE OF HAWAII  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
SURVEY DIVISION

Paul T. Nuha - State Land Surveyor

POSSIBLE CONSERVATION DISTRICT USE VIOLATION  
Waioli, Halealea, Kauai, Hawaii

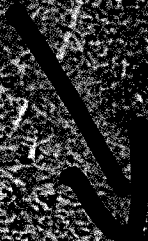
Job No.  
Survey by D. Oyama  
F. B. 2064, p. 47

EXHIBIT 8

TAX MAP KEY: 5-5-08:1, 3, 4, 5 and Por. 2

X 17" = 1.3 Sq. Ft.

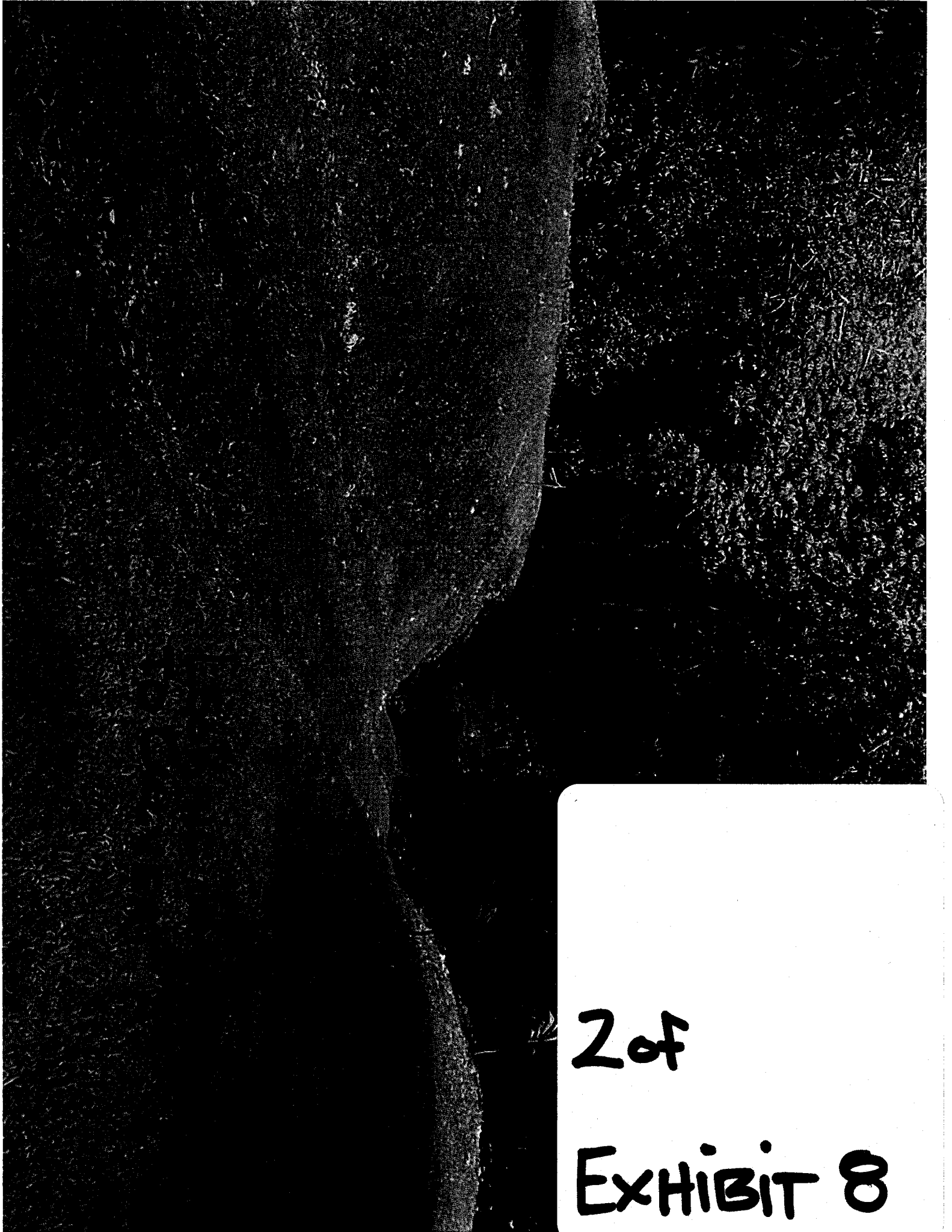
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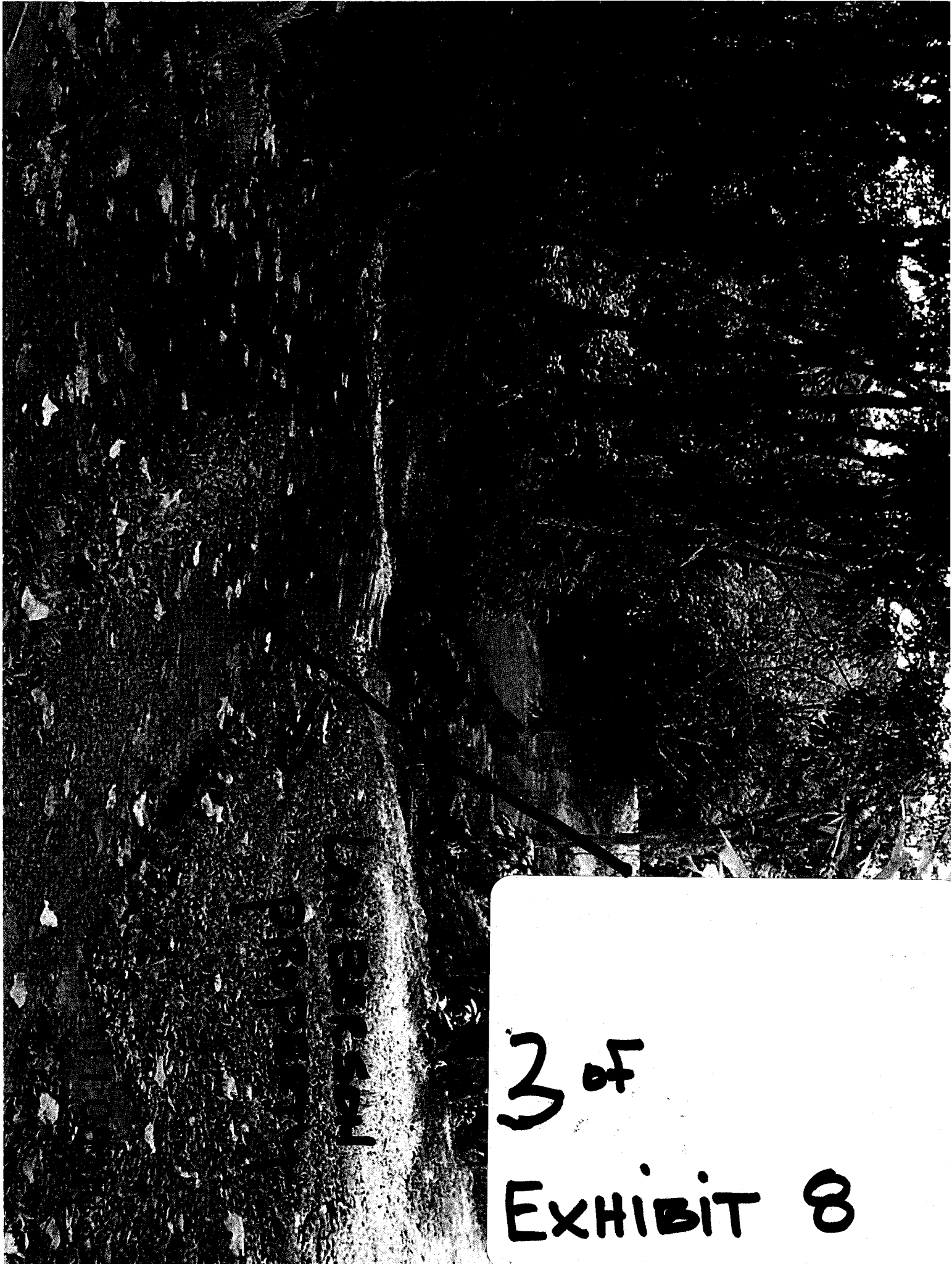
EXHIBIT 8





2 of

EXHIBIT 8




3 of

EXHIBIT 8

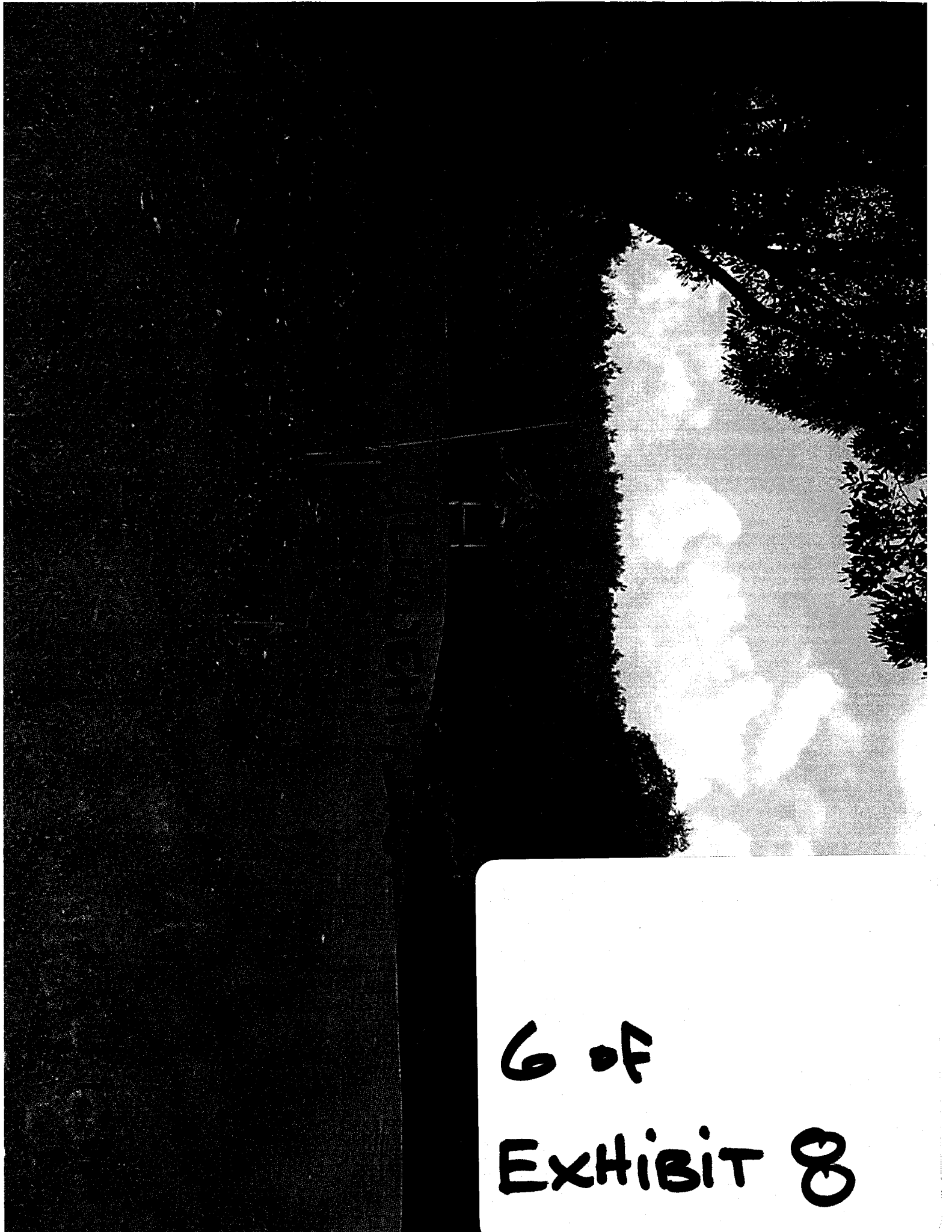


Linderson

4 of  
EXHIBIT 8




5 of  
Exhibit 8



6 of

EXHIBIT 8



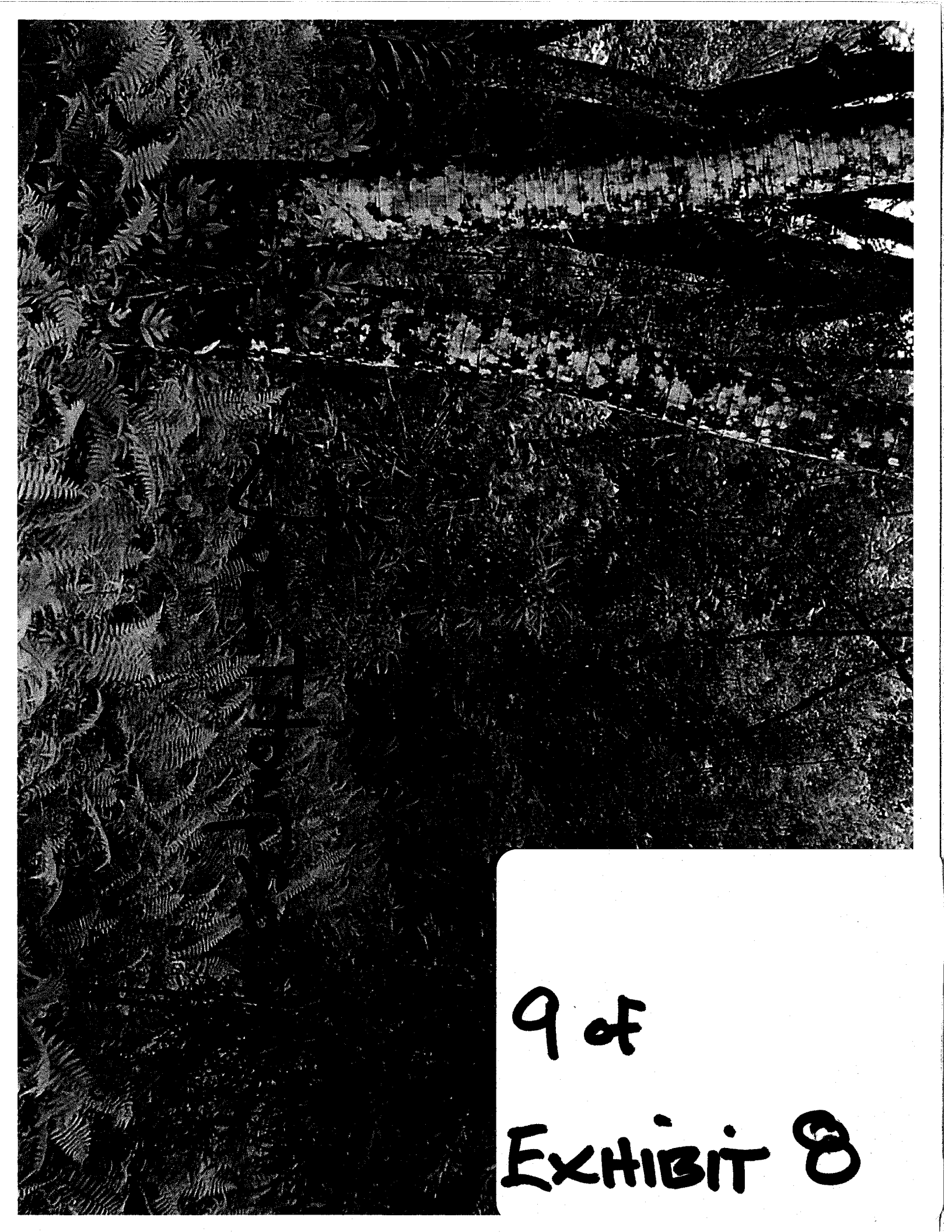
7 of

Exhibit 8





8 of  
Exhibit 8



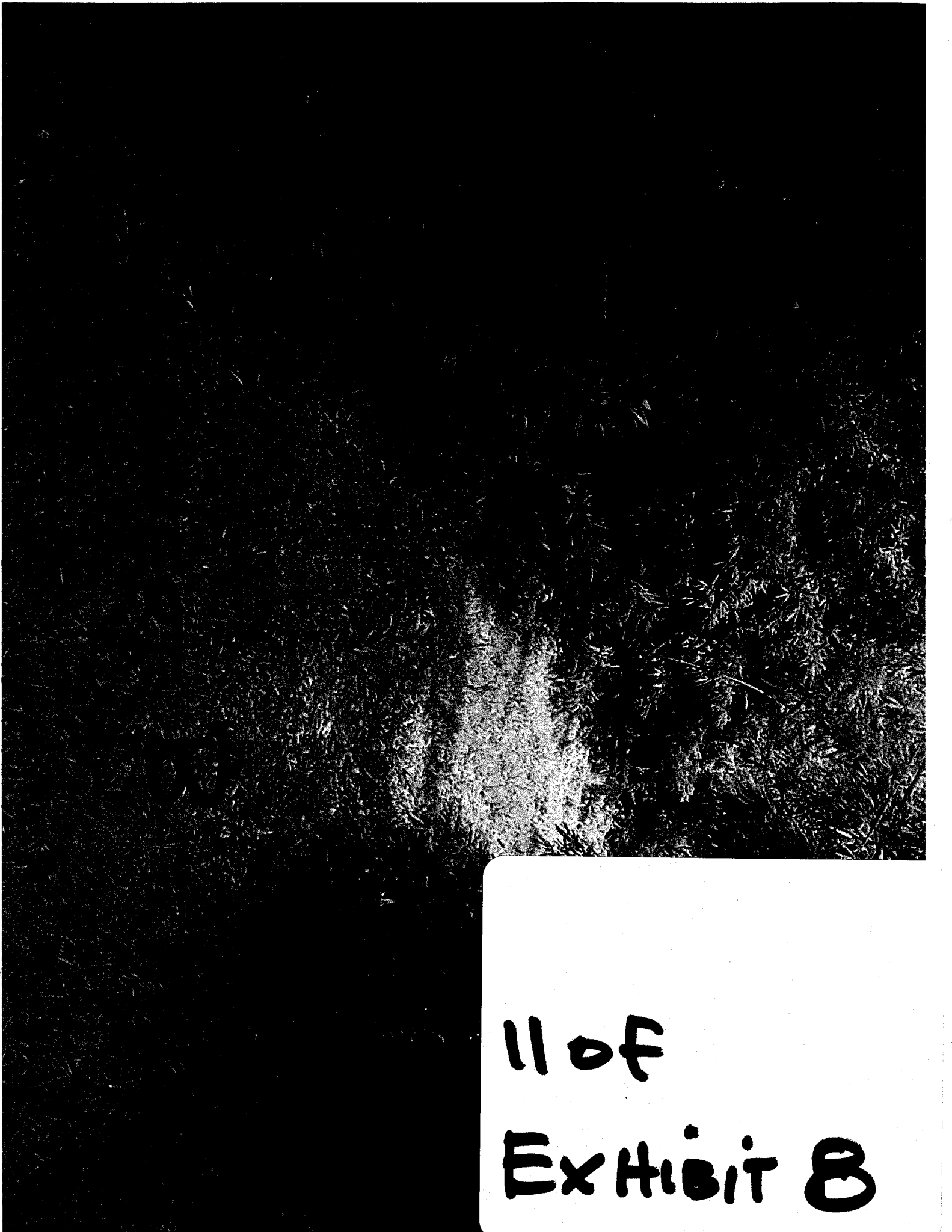
9 of  
EXHIBIT 8





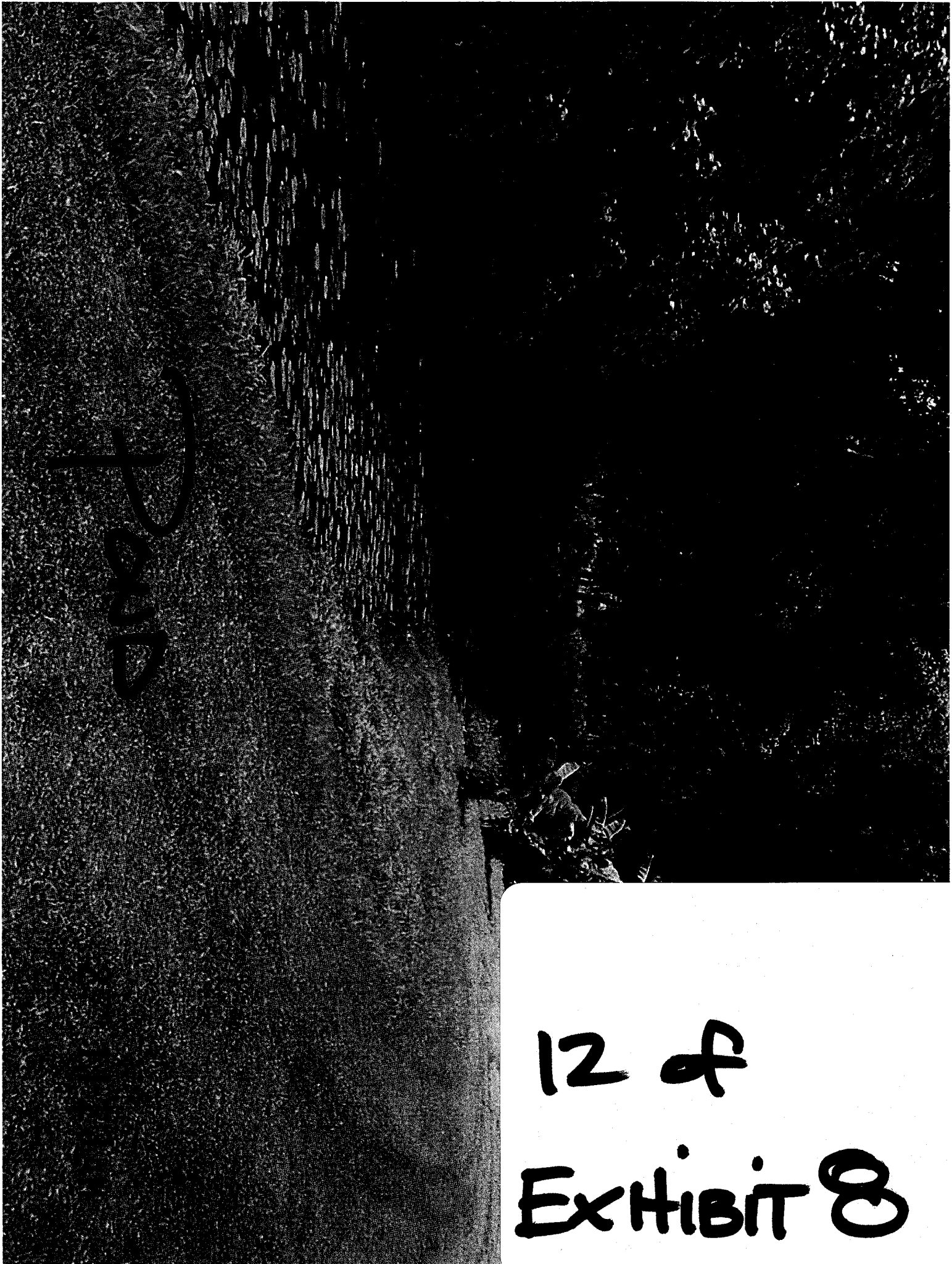
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Exhibit 8



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Exhibit B



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Exhibit 8

'88 24 12

IN THE CIRCUIT COURT OF THE FIFTH CIRCUIT

STATE OF HAWAII

STEVEN THOMAS BROWN as  
Trustee for BOYCE REID  
BROWN, III, and DOUGLASS  
BONAR,

Plaintiffs,

vs.

HAROLD Y. KOBAYASHI,  
et al.,

Defendants.

) CIVIL NO. 3226

) ORDER GRANTING IN PART AND  
) DENYING IN PART PLAINTIFFS'  
) MOTION FOR SUMMARY JUDGMENT

ORDER GRANTING IN PART AND DENYING IN PART  
PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Plaintiffs' Motion for Summary Judgment with Defendant State of Hawaii and Intervenor/Defendant J. William Sanborn joining in said motion came on for hearing on September 29, 1988. The Court, having heard the testimony of the Plaintiff Douglass Bonar, and having received into evidence exhibits offered by the Plaintiff, and having heard the arguments of counsel and being fully advised in the premises; it is

THEREUPON ORDER AND ADJUDGED:

1. That the Plaintiffs' Motion for Summary Judgment with respect to their entitlement to an easement for ingress and egress from Kuhio Highway to the real property commonly

EXHIBIT

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referred to as TMK 4-5-5-8-5 and 4-5-5-8-4 is hereby GRANTED;

2. That the Plaintiffs' Motion for Summary Judgment with respect to the location and/or size of the easement referred to in Paragraph One, including whether said easement shall pass over the Defendant Kobayashi's property, is hereby DENIED;

3. That the Defendant State of Hawaii's Joinder in the Plaintiffs' Motion for Summary Judgment with respect to its entitlement to an easement for ingress and egress from Kuhio Highway to the real property commonly referred to as TMK 4-5-5-8-2 is hereby GRANTED;

4. That the Defendant State of Hawaii's Joinder in the Plaintiffs' Motion for Summary Judgment with respect to the location and/or size of the easement referred to in the preceding paragraph, including whether said easement shall pass over the Defendant Kobayashi's property is hereby DENIED;

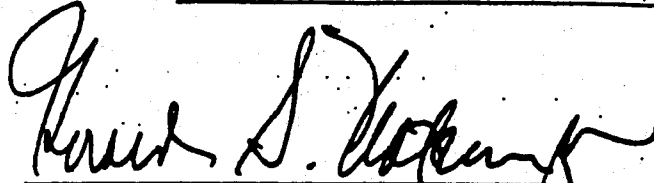
5. That the Intervenor/Defendant J. William Sanborn's Joinder in the Plaintiffs' Motion for Summary Judgment with respect to his entitlement to an easement for ingress and egress from Kuhio Highway to the real property commonly referred to as TMK 4-5-5-8-9, 14, 39, 40, 41, 42, 43, 44, 49, 50 and 53 is hereby GRANTED;

6. That the Intervenor/Defendant J. William Sanborn's Joinder in the Plaintiffs' Motion for Summary Judgment with respect to the location and/or size of the easement referred to in

the preceeding paragraph including whether said easement shall  
pass over the Defendant Kobayashi's property is hereby DENIED.

DATED: Lihue, Hawaii,

OCT 24 1959

  
Judge of the Above-Entitled Court

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REF:LD:EH

APR 24 1996

Mr. Tom C. Leuteneker  
Carlsmith Ball Wichman Case  
and Ichiki  
Attorneys at Law  
One Main Plaza  
2200 Main Street, Suite 400  
P.O. Box 1086  
Wailuku, Maui, Hawaii 96793-1086

Dear Mr. Leuteneker:

SUBJECT: Review of Resolution to Resolve Conservation District  
Violations, Waioli Valley, Kauai

The department has completed its review of the July 23, 1993 Board action concerning violations in Waioli Valley, Kauai. There are three landowners (Bonar, Kuntz, Thompson). Each have responsibilities and obligations. All parties equally share in an interim and final resolution regarding a legal access roadway that adequately serves all the kuleana parcels.

First, regarding monetary fines, Mr. Thompson paid the fine attributed to TMK: 5-5-08: 01. Mr. and Mrs. Kuntz, in association with the U.S. Justice Department, has sent a check to resolve the fines attributed to TMKs: 5-5-08: parcels 03, 04 and 05. As agreed upon, the department is holding that check until other pertinent conditions imposed by the Board (including an interim and long term resolution concerning an access roadway to the properties) are resolved.

The Board imposed fines regarding violations on TMKs: 5-5-08: parcels 54 and 02 are the responsibility of Mr. Douglas Bonar. Mr. Bonar has not indicated to the department that he will comply with the Board's decision. As Mr. Bonar's counsel, please advise us if Mr. Bonar will be paying the following fines:

TMK: 5-5-08: 54 (Bonar)  
Violations: (3) x \$500.00 = \$ 1,500.00  
Admin. Cost: (3) x \$177.85 = \$ 533.55  
Subtotal Fine: \$ 2,033.55

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TMK: 5-5-08: 02 (State land)  
Violations: (12) x \$500.00 = \$ 6,000.00  
Admin. Cost: (12) x \$177.85 = \$ 2,134.20  
Subtotal Fine: \$ 8,134.20

Total Fine: \$10,167.75

Mr. Bonar must pay these fines by June 1, 1996, or establish a reasonable payment schedule acceptable to the department.

Once the fines have been paid, the department will consider the roadway easement issue. Pursuant to your letter of March 18, 1996, the department will consider use of the existing illegal roadway, including allowing the illegal culverts to remain, as an interim access until a more permanent roadway alignment to service all the kuleana parcels can be formulated and necessary applications submitted by all affected private landowners. However, it is important that a qualified engineer examine the culverts as soon as possible to ensure their structural integrity and conveyance capacity related to stream flow and flood potential. Should the engineering survey confirm that the culverts are structurally sound, the department will consider allowing them to remain for an interim period not to exceed one year.

Any future long term roadway alignment proposal should minimize use of state land segments and be configured to maximize use of privately-owned lands.

Thank you for your attention regarding this matter. Should you have any questions, please contact assigned staff planner Ed Henry.

Aloha,

/s/ GILBERT S. COLOMA-AGARAN

for MICHAEL D. WILSON

Enclosures

xc: Mr. and Mrs. Kuntz ✓  
Anthony Hall, U.S. Attorney's Office ✓

bxc: Kauai Land Agent ✓  
DOFAW-Kauai  
Water Commission ✓  
Historic Preservation Division ✓  
DOCARE ✓  
William Tam, Deputy Attorney General ✓

EH:skk

EHK

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